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Implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II) and strengthening of the United Nations Human Settlements Programme (UN-Habitat)

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Report of the Secretary-General

Summary

The present report, submitted pursuant to paragraph 24 of General Assembly resolution 68/239, provides a description of the activities of the United Nations Human Settlements Programme (UN-Habitat) since the issuance of the previous report (A/68/332) in implementing the outcome of the second United Nations Conference on Human Settlements (Habitat II) and in strengthening UN-Habitat.

The report contains an update of progress made in preparations for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), including through the seventh session of the World Urban Forum and the World Urban Campaign. It also provides a description of progress made in the implementation of three major issues highlighted by the General Assembly in resolution 68/239: outcome of the governance review process; financial developments in UN-Habitat; and sustainable urbanization and the post-2015 development agenda.

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The report further describes the engagement of UN-Habitat in the first-ever integration segment of the Economic and Social Council, the thematic focus of which was on sustainable urbanization, as well as significant global and regional activities implemented by the Programme during the reporting period, including the publication of the *Global Report on Human Settlements 2013: Planning and Design for Sustainable Urban Mobility*, World Habitat Day 2013 activities and preparations for the first World Cities Day. It concludes with a number of recommendations relating to Habitat III and urbanization and human settlements policy issues.

I. Introduction

1. The present report is submitted pursuant to paragraph 24 of General Assembly resolution 68/239 on the implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II) and the strengthening of the United Nations Human Settlements Programme (UN-Habitat).

II. Update on progress made in preparations for Habitat III

2. The General Assembly, in paragraph 24 of its resolution 68/239, requested the Secretary-General to include in his report to the Assembly at its sixty-ninth session an update on progress made in the preparations for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III).

3. During the reporting period, UN-Habitat preparations for Habitat III were guided by Assembly resolutions 67/216 and 68/239, and UN-Habitat Governing Council resolution 24/14.

A. Global preparatory activities

4. Global preparatory activities carried out during the reporting period include: follow-up to Governing Council decisions on Habitat III; support to deliberations of the Committee of Permanent Representatives to UN-Habitat on Habitat III; mobilization of local Governments and other Habitat Agenda partners; mobilization of resources for the preparatory process and the conference itself; and establishment of the Habitat III secretariat.

Follow-up to UN-Habitat Governing Council decisions on Habitat III

5. The General Assembly, in paragraph 14 of its resolution 67/216, requested the Secretary-General of Habitat III to prepare, using the expertise of the United Nations system, a proposal for consideration by the Governing Council at its twenty-fourth session, on how best to provide inputs for and support to the preparatory process of the conference in the most inclusive, efficient, effective and improved manner, and to proceed accordingly.

6. In response, the Executive Director of UN-Habitat, in his capacity as Secretary-General of the Conference, presented the requested proposal to the Governing Council at its twenty-fourth session. The Governing Council was requested to decide on the documentation and meetings that would constitute the inputs and support of UN-Habitat and the United Nations system to the preparatory process for Habitat III.

7. The present report describes implementation by UN-Habitat of the remaining follow-up activities in the current reporting period.

8. Firstly, in follow-up to Governing Council resolution 24/14, paragraph 2 (a), by which the Council had requested the Habitat III Secretary-General to consider possible contributions from United Nations system organizations and Habitat Agenda partners to the preparatory process, the United Nations inter-agency coordinating committee for Habitat III was established on 3 July 2013 in Geneva,

after which the committee had its first meeting (see A/68/332, paras. 30 and 31). During the reporting period, the committee held its second meeting in New York on 27 November 2013, and its third meeting on 8 April 2014 in Medellin, Colombia, during the seventh session of the World Urban Forum.

9. At the twenty-seventh session of the High-level Committee on Programmes of the United Nations System Chief Executives Board for Coordination (CEB), held in Santiago on 17 and 18 March 2014, UN-Habitat proposed the introduction of an agenda item on "A new United Nations urban agenda". Following positive feedback, a working group was established in early July 2014 and began its work.

10. On the basis of the report of that working group, it is expected that the High-level Committee on Programmes will prepare draft policy recommendations on a new United Nations urban agenda for preliminary consideration by CEB in November 2014. It is also envisaged that, after approval by the Board, the final recommendations will be submitted to the Habitat III Preparatory Committee in December 2015 as the formal input of the United Nations system organizations to the preparatory process.

11. Secondly, in line with paragraph 2(c) of Governing Council resolution 24/14, UN-Habitat continued to refine the updated think piece intended to inform the Habitat III preparatory process. The document has been shared with other United Nations programmes and funds, specialized agencies and Member States.

12. Thirdly, in line with paragraph 2(d) of resolution 24/14, the Habitat III Secretary-General finalized and distributed to Member States the guidelines and format for the preparation of Habitat III national reports in November 2013. The guidelines were the outcome of a series of consultations with Member States, Habitat Agenda partners and United Nations system organizations held during the second half of 2013.

Deliberations of the Committee of Permanent Representatives to UN-Habitat

13. As stated above, the Governing Council, through its resolution 24/14, requested the Secretary-General of the Conference, in his capacity as Executive Director, and in consultation with the Committee of Permanent Representatives, to refine his proposed input to the preparatory process for Habitat III.

14. In follow-up to the above request, the Committee's working group for planning (later renamed the Committee of Permanent Representatives Subcommittee on Policy and Programme of Work) continued to hold meetings on preparations for Habitat III. Four meetings have been held since and updates provided on the status of preparations for Habitat III, focusing on the organizational aspects and documentation, including the draft think piece, and the road map for the preparatory process. The Committee has expressed its readiness to be involved in Nairobi-based preparations for Habitat III.

Mobilization of local Governments and other Habitat Agenda partners

15. During the reporting period, UN-Habitat mobilized local Governments and other Habitat Agenda partners through the World Urban Forum, the World Urban Campaign, and a project entitled "Strengthening Partnerships for an African Urban Agenda".

Seventh session of the World Urban Forum

16. The World Urban Forum was recognized by the General Assembly in its resolution 68/239 as the foremost global arena for interaction among policymakers, local government leaders, non-governmental stakeholders and expert practitioners in the field of human settlements.

17. The seventh session of the World Urban Forum, convened by UN-Habitat, was highly successful, in terms of relevance, outcomes and participation. It was attended by more than 22,000 persons from more than 140 countries, gathered together to seek ways of promoting inclusive urban development in all parts of the world. The spirit and main recommendations of the Forum were captured in the Medellin Declaration, the key outcome document of the session. The Declaration focused on equity as a foundation of sustainable development, the city as an opportunity, the need to promote a new urban agenda, and the need to contribute to the future through deliberations on the post-2015 development agenda and Habitat III.

18. Participants at the seventh session of the World Urban Forum acknowledged that, when equity is an integral part of the development agenda, the deep structural problems and challenges of cities can be better addressed. Equity is both a moral obligation and a central element of social justice, and becomes part of transformative change.

19. Participants highlighted the need to promote a new urban agenda that can overcome the challenge of the lack of adequate legal framework and planning, which leads to the relentless expansion of cities, intensive energy use, dangerous climate change impacts, multiple forms of inequality and exclusion and increased difficulties in providing decent work for all. The agenda should promote an urbanization model that is people-centred.

20. The framework of the post-2015 development agenda was identified as an opportunity to reaffirm the universal relevance of well-planned and well-managed cities as real drivers for change. Towards that end, the participants at the Forum reaffirmed the need to include key aspects of sustainable cities and human settlements in the post-2015 development agenda in order to harness the transformational power of cities to achieve and advance sustainable development.

21. The discussions at the seventh session of the World Urban Forum provided an important contribution to Habitat III. It was recognized that Habitat III was a unique opportunity to develop a new urban agenda that could contribute to harnessing urbanization as a positive force for present and future generations, and to advancing the quest for equity and shared prosperity.

22. To this end, the World Urban Campaign was recognized in Medellin as a participatory process and partnership platform among actors of change working to ensure an inclusive and encompassing process towards Habitat III.

World Urban Campaign

23. Since its launch in March 2010 at the fifth session of the World Urban Forum, the World Urban Campaign has evolved from a knowledge-sharing network into a think tank and has been considerably strengthened, in terms of both legitimacy and the number of partners engaged.

24. The Campaign currently includes more than 75 partners and members, which feature major constituencies and umbrella organizations with large global outreach. Its partners are instrumental for UN-Habitat in promoting urbanization issues and solutions in general, as well as Habitat III. Campaign members also act as multipliers in terms of dissemination of key messages.

25. Since the sixth session of the World Urban Forum, held in Naples, Italy, in September 2012, and the launch of the "Manifesto for cities: the urban future we want", the World Urban Campaign has become actively engaged in the Habitat III preparatory process. Partners have recognized the strategic importance of Habitat III to the elevation of the urban agenda globally. A working group on Habitat III, established by the World Urban Campaign Steering Committee in September 2012, met in April and September 2013 to reflect on past conferences, initiate a strategy and draft a position on the "City we need" (the vision of a city for the twenty-first century) as a contribution by partners to the Conference.

26. The consensus document on the "City we need" was launched in New York in March 2014 by key partners, including the Special Envoy of the United Nations Secretary-General for Cities and Climate Change, Michael R. Bloomberg, in collaboration with the Ford Foundation. The next step in the "City we need" process towards Habitat III will take place at the Urban Thinkers Campus in Caserta, Italy, in October 2014.

Engagement of local authorities and regional governments

27. The General Assembly, in paragraph 7 of its resolution 68/239, invited Member States to facilitate participatory processes and wide stakeholder participation, including local authorities and their associations, when developing, revising and implementing national urban policies, where appropriate, in particular through national urban forums also as a means for the preparation of Habitat III.

28. The outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want", acknowledges, in paragraph 42, the importance of all levels of government and legislative bodies, including local governments, in promoting sustainable development in the following words: "We reaffirm the key role of all levels of government and legislative bodies in promoting sustainable development."

29. During the preparation for the Conference, held in Rio de Janeiro, Brazil, in June 2012, a group of local government associations met in April 2012 to provide inputs to the Group of Friends of Sustainable Cities. This informal group of 29 permanent representatives to the United Nations in New York is co-chaired by Singapore and Sweden and has been instrumental in bringing the urban dimension to the deliberations of the General Assembly. The United Nations Secretary-General was present at the April meeting and the representatives to the United Nations took careful note of the contributions by mayors and governors.

30. A result of the success of the Rio Conference in this regard was the initiative to form the "Global Task Force of Local and Regional Governments for the Post-2015 Development Agenda towards Habitat III" by United Cities and Local Governments, in order to build a joint strategy to contribute to the international policymaking debates within the framework of the post-2015 development agenda, follow-up to the Rio Conference and towards Habitat III.

31. With regard to other Habitat Agenda partners, UN-Habitat launched a project entitled "Strengthening Partnerships for an African Urban Agenda", with financial support from Nigeria amounting to $3 million. Building on "*The New Pact: Optimizing the Urban Advantage*" of the fourth African Ministerial Conference on Housing and Urban Development, this project aims at highlighting the importance of urbanization as an imperative for development in Africa while preparing sub-Saharan Africa for Habitat III. It articulates the region's priorities for the next 20 years.

32. The involvement of Habitat Agenda partners in all steps in the development of an African Urban Agenda, which would also serve as Africa's input to the Habitat III preparatory process, aims to ensure an outcome that truly responds to African people's needs.

33. The project has attracted a lot of interest from other key stakeholders and has been merged with the Presidential Initiative on an African Urban Agenda, spearheaded by President Mahama of Ghana and President Jonathan of Nigeria. Ghana announced a contribution of $500,000 at the take-off conference for the project held in December 2013. The Economic Commission for Africa, the African Development Bank, the Cities Alliance and United Cities and Local Governments-Africa have all expressed their willingness to partner with UN-Habitat to support Member States in driving the African Urban Agenda.

Financial and other resources for Habitat III and its preparatory process

34. The proposal presented by the Habitat III Secretary-General to the UN-Habitat Governing Council during its twenty-fourth, session, in follow-up to paragraph 14 of General Assembly resolution 67/216, was accompanied by a proposed road map and a draft budget for the preparatory process.

35. At that time, an estimated $12,861,300 was foreseen for the Habitat III preparatory process and the conference itself, excluding the operational costs for the host country. Of that amount, $9,073,100 would be mobilized for the Habitat III trust fund and $3,788,200 would be requested from the regular budget.

36. In November 2013, the United Nations Controller fully operationalized the Habitat III trust fund, and an account for deposit of voluntary contributions was opened.

37. In December 2013, under section 15 of the regular budget of the United Nations (Human settlements), the General Assembly allocated $2,073,700 for the Habitat III preparatory process during the biennium 2014-2015. A further amount of $1,063,000 was allocated under section 2 of the regular budget (General Assembly and Economic and Social Council Affairs and Conference Management) for the organization of the first two Habitat III Preparatory Committee meetings.

Establishment of the Habitat III secretariat

38. The Habitat III Secretary-General established the Habitat III secretariat on 4 February 2014. At its helm is the Habitat III Deputy Secretary-General, at the D-2 level. This D-2 position is funded by the regular budget, as are three General Service posts at the G-7 level. Other Professional posts will be funded by the Habitat III trust fund.

B. Regional and national preparatory activities

39. In all regions, progress with Habitat III preparatory activities was made on several fronts and to varying extents, including intergovernmental deliberations, establishment or strengthening of national Habitat committees and preparation of national Habitat III reports.

Africa

40. The fifth session of the African Ministerial Conference on Housing and Urban Development, which was held from 25 to 28 February 2014 in N'Djamena, included in its agenda a discussion of the Habitat III preparatory process and the post-2015 development agenda — which linked the two processes. The theme of the session was "Case studies in financing human settlements in Africa: appropriate legislative frameworks and innovations in implementation". Other matters discussed included the urban agenda for Africa and its linkage with the African Union Agenda 2063, the outcome of the take-off conference for the project on "Strengthening Partnerships for an African Urban Agenda" and progress made in the preparations for the seventh session of the World Urban Forum.

41. The main outcome documents of the session were the N'Djamena Declaration and the N'Djamena Action Plan. Both documents outlined Africa's key priorities in the area of cities and other human settlements, forming the continent's aligned input to the African Urban Agenda, the Habitat III preparatory process and the post-2015 development agenda.

42. Furthermore, three broad recommendations were made. First, the Ministerial Conference needed to consider how to strengthen its engagement in regional and global level processes, including through harmonization of inputs to Habitat III, the post-2015 development agenda and the seventh session of the World Urban Forum. Second, effective preparations for Habitat III needed strengthened national Habitat committees and the commitment to have the first drafts of Habitat III national reports by the first meeting of the Habitat III Preparatory Committee. Third, Ministerial Conference members were encouraged to consider whether they were in a position to declare support for a stand-alone sustainable development goal on urbanization and to develop clear milestones in the preparatory journey towards Habitat III.

43. UN-Habitat, through the "Strengthening Partnerships for An African Urban Agenda" project, is currently supporting 33 least developed countries in Africa to prepare Habitat III national reports, with funding from Nigeria and France. This process started with countries that had already established national Habitat committees. By early July 2014, 20 African countries had established or were in the process of establishing national Habitat committees, while 5 countries had commenced preparation of Habitat III national reports.

Arab States

44. Three Habitat III preparatory meetings were held in the Arab States region. On 27 May 2014 in Beirut,. the UN-Habitat Regional Office for the Arab States held a meeting with the Economic and Social Commission for Western Asia (ESCWA) on regional preparations for the post-2015 development agenda and Habitat III. Strong interest was shown by ESCWA to collaborate on both processes.

45. From 9 to 11 June 2014, an event titled "Regional Workshop on Monitoring the Post-2015 Sustainable Development Agenda Targets: Sustainable Urbanization in Focus — the Role of Urban Observatories" was held in Kuwait City. The meeting was attended by representatives from various Arab countries engaged in local and national urban observatories. The meeting discussed the role of urban observatories and the city prosperity index in measuring the implementation of sustainable development goals in the Arab region. Participants encouraged the establishment of indicators at an early stage in order to ensure ownership over the process and sustainability of the outcomes.

46. On 2 July 2014, the UN-Habitat Regional Office for the Arab States held a meeting with the League of Arab States in Cairo, as part of the UN-Habitat collaboration with the League in the preparation of an Arab Strategy on Housing and Sustainable Urban Development. The League of Arab States had been engaged in the post-2015 development agenda regional preparations and offered support in providing inputs to the Habitat III regional reports. It was agreed that the Iraqi National Habitat Committee would support the League of Arab States in the preparation of the Habitat III Arab regional reports.

47. By early July 2014, 11 Arab states had established or were in the process of establishing national Habitat committees, while all 11 had commenced preparation of Habitat III national reports.

Asia and the Pacific

48. "Regional preparations for Habitat III" was an agenda item at the third session of the Economic and Social Commission for Asia and the Pacific (ESCAP) Committee on Environment and Development, held in Bangkok in October 2013. ESCAP member States reaffirmed the importance of the regional preparatory processes and endorsed the ESCAP proposal for planned regional preparations for Habitat III.

49. ESCAP also organized an event on the role of local governments in "The future we want" in Bangkok in October 2013. ESCAP and UN-Habitat jointly discussed Habitat III preparations with the Embassy of Indonesia in Bangkok. This was followed by a visit to Jakarta by the Habitat III Secretary-General in June 2014, during which further discussions took place, focusing on preparations for Habitat III in the region and Indonesia's role in the process.

50. A number of meetings at which Habitat III was discussed or promoted were attended by the UN-Habitat Regional Office for Asia and the Pacific.

51. The Habitat III national preparatory process was included in the United Nations Development Group Asia-Pacific Guidelines for Integrating Urbanization in United Nations Development Assistance Frameworks. Finally, UN-Habitat, in collaboration with ESCAP, prepared the *Asia-Pacific State of Cities Report 2015*, to be published in early 2015.

52. By early July 2014, updates had been received from 14 countries concerning the establishment of national Habitat committees and preparation of Habitat III national reports. Of those countries, 11 had established national Habitat committees, while 10 had started preparing their Habitat III national reports.

Europe and North America

53. In Europe and North America, in addition to the establishment or strengthening of national Habitat committees and the preparation of national reports, the Habitat III preparatory process was initiated with intergovernmental deliberations through the Economic Commission for Europe (ECE) and the European Union.

54. In October 2013 UN-Habitat launched *State of European Cities in Transition 2013: Taking Stock after 20 Years of Reform* during the European Union Open Days in Brussels. It also presented the Habitat III preparatory process at the ECE Ministerial Meeting on Housing and Land Management held in October in Geneva. At the same meeting ECE adopted its strategy for sustainable housing and land management containing specific targets to be reached by member States by 2020. The strategy is built upon a survey of opinions of the 58 ECE member States on priorities and challenges in housing and land management, including sustainable urban development, in the region. As part of this effort, ECE has worked with UN-Habitat to conform its country profiles to the guidelines for the preparation of Habitat III national reports.

55. In October 2013, in relation with the Habitat III preparatory process in the European Union, the UN-Habitat Liaison Office in Brussels started engaging with the Urban Development Group, which comprises European Union ministries in charge of urban and territorial development. At the November Urban Development Group meeting of Directors General responsible for urban issues, held in Vilnius, the European Union member States agreed that UN-Habitat should be included as a permanent observer in the meetings of the Urban Development Group and subsequent meetings of Directors General and in ministerial meetings.

56. In February 2014, the European Commission Directorate General for Regional and Urban Policy laid a stepping stone for the formulation of a European Union Urban Agenda through the Cities of Tomorrow: Investing in Europe conference, held in Brussels. In its report, the conference considered the European Union's contribution to Habitat III as an opportunity to take stock of de facto European Union urban priorities and affirmed the lead role of the European Union in sustainable urban development.

57. At the Urban Development Group meeting under the Italian Presidency of the Council of the European Union, held in Rome in July 2014, discussions were held on a proposal to develop a framework of cooperation between the European Union and UN-Habitat aimed at strategic collaboration in preparing for Habitat III.

Latin America and the Caribbean

58. The twenty-second meeting of the General Assembly of Ministers and High-level Authorities of the Housing and Urban Development Sector in Latin America and the Caribbean, at which Habitat III was discussed, was held in Santiago from 30 September to 2 October 2013, with 13 Governments represented. The regional meeting is responsible for the promotion of intergovernmental coordination and cooperation among Latin American and Caribbean countries in all areas relating to sustainable development in human settlements.

59. The main result of the meeting was a commitment to promote the development of urban policies that are inclusive of populations of informal settlements,

guaranteeing access to urban infrastructure, community services and environmental sanitation, while also strengthening human and social capital.

60. The main outcome document of the assembly was the Santiago Declaration, in which the participants, among other things, expressed their desire to participate actively in the seventh session of the World Urban Form and the Habitat III preparatory process, as well as the conference itself.

61. The UN-Habitat Regional Office for Latin America and the Caribbean has designed a road map for the Habitat III preparatory process at the national and regional levels, including preparation of Latin America and the Caribbean national and regional reports for Habitat III. The Regional Office has also drafted a project document for the purpose of mobilizing financial resources needed to provide technical support for the preparation of Habitat III national reports.

62. Meetings with the Cities Alliance were held and the Alliance expressed interest in co-funding Habitat III national and regional reports.

63. By early July 2014, six Latin America and Caribbean States had established national Habitat committees, while one State had commenced preparation of its Habitat III national report.

C. Information and publicity

64. During the course of 2013, UN-Habitat created a webpage for Habitat III. All General Assembly and Governing Council resolutions on Habitat III, and all key documents, including reports submitted to the Assembly and Governing Council on Habitat III and the Habitat III budget, have been uploaded to the webpage.

65. The seventh session of the World Urban Forum and the World Urban Campaign, both already described above, also contributed significantly to dissemination of information on Habitat III and general publicity of the conference's preparatory process.

III. Outcome of the governance review process

66. In paragraph 15 of its resolution 68/239, the General Assembly encouraged the Committee of Permanent Representatives to continue its consideration of proposals, including recommendations and options for reform, with a view to reaching a consensus on how to proceed with the governance review.

67. During the reporting period, the Committee, through its Bureau, continued consideration of the governance review process, including the timing of this process in relation to the envisaged outcome of the Habitat III conference. However, at the time the present report was being prepared, no consensus had been reached.

IV. Update on financial developments

68. Income projections for the biennium 2014-2015 stand at $62.9 million for non-earmarked income and $283 million for earmarked income. As at 30 June 2014, non-earmarked income received and confirmed pledges amounted to $24.5 million

(or 39 per cent of the projection), while $57.6 million (or 19 per cent of the projection) had been received in earmarked income.

69. During the reporting period, UN-Habitat continued to implement a strengthened resource mobilization strategy aimed at widening its donor base to include emerging economy countries, and to expand its earmarked project portfolio. Positive results have been achieved with respect to the earmarked portfolio; earmarked income received in 2013 was 27.6 per cent higher than that received in 2012.

70. Streamlining of full cost recovery in line with the principles outlined by the General Assembly in its resolution 67/226, to enable more accurate attribution of costs to projects, continued, resulting in more accurate attribution of $1.8 million to earmarked projects in 2013, thus reducing subsidization of earmarked projects by core funds. A higher level of cost recovery is expected in 2014 as cost recovery is applied to an increasing proportion of new contribution agreements.

71. UN-Habitat also made considerable progress in the implementation of the International Public Sector Accounting Standards (IPSAS), including accurate recording of fixed assets in all offices, a major update of the contribution and implementing partner agreement database and associated income and payment schedules, as well as reviewing of unliquidated obligations. From the end of 2014, UN-Habitat financial statements will be produced annually and will be IPSAS compliant. UN-Habitat is now focusing on fostering IPSAS compliance throughout the organization.

72. During the reporting period, UN-Habitat continued to control core expenditure through a wide range of measures, including reducing travel costs, limitation of new recruitment to critical positions, closer alignment of expenditure with forecast income and establishment of a matrix organizational structure to enable more flexible allocation of staff. In 2014, a voluntary early retirement package was offered to senior staff so as to achieve a better balance of staff at the different professional grades, as well as to align core staffing levels with core financial resources and organization functional needs.

73. The above measures and the wider organizational reforms recently undertaken by UN-Habitat are expected to lead to a reduction in the core deficit during the biennium 2014-2015.

V. Sustainable urbanization and United Nations system-wide processes

74. By paragraph 2 of its resolution 68/239, the General Assembly encouraged giving appropriate consideration to sustainable urbanization in the elaboration of the post 2015 development agenda. During the reporting period, UN-Habitat continued contributing to the post-2015 development agenda consultations, linking closely its contribution to the Habitat III preparatory process.

A. Post-2015 United Nations development agenda

75. Building on its earlier contribution to the work of the United Nations System Task Team on the Post-2015 United Nations Development Agenda, during the reporting period UN-Habitat participated in the technical support team of the Open Working Group on Sustainable Development Goals. In particular, it contributed significantly to the seventh session of the Open Working Group, held from 6 to 10 January 2014, including by co-drafting the related issues brief on sustainable cities and human settlements. That effort was led jointly by UN-Habitat and the United Nations Environment Programme, with the participation of 12 other United Nations programmes, funds, agencies and regional commissions.

76. UN-Habitat also continued to participate in the activities of the Sustainable Cities Thematic Group of the Sustainable Development Solutions Network, and to work with the Global Task Force of Local and Regional Governments, as well as with the Communitas Coalition for Sustainable Cities and Regions.

77. As Vice-Chair of UN-Water, UN-Habitat also contributed to the sustainable development goals consultation process and to the discussions on the post-2015 development agenda with regard to water and sanitation.

78. There is now increasing recognition of the contribution of urbanization to sustainable development. In his report entitled "A life of dignity for all: accelerating progress towards the Millennium Development Goals and advancing the United Nations development agenda beyond 2015" (A/68/202), the Secretary-General recognized meeting the challenges of urbanization as one of 14 key transformative and mutually reinforcing actions that applied to all countries that would be required to bring to life the vision of the development agenda beyond 2015.

79. At the seventh session of the Open Working Group, which focused on sustainable cities and human settlements and sustainable transport, among other topics, there was significant support by member States for the inclusion of urbanization in the sustainable development goals, as indicated by the co-chairs in their summary of the session. In late February 2014, the issue of sustainable cities and human settlements was included among the 19 focus areas identified by the co-chairs as a basis for discussions on the formulation of the sustainable development goals.

80. At the integration segment of the Economic and Social Council held at the end of May 2014, there was full support for a stand-alone sustainable development goal on sustainable cities and human settlements, as more fully described in the section below.

81. The final proposal of the Open Working Group on Sustainable Development Goals was issued on 19 July 2014. Its proposed goal 11 is entitled "Make cities and human settlements inclusive, safe, resilient and sustainable". This final proposal also contained three other goals that are, to varying extents, directly relevant to the UN-Habitat strategic plan for 2014-2019, namely, proposed goal 6: "Ensure availability and sustainable management of water and sanitation for all"; proposed goal 7: "Ensure access to affordable, reliable, sustainable and modern energy for all"; and proposed goal 9: "Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation".

B. Integration segment of the Economic and Social Council

82. The first-ever integration segment of the Economic and Social Council was held from 27 to 29 May 2014 in New York. The segment focused on the theme of "Sustainable urbanization", and was aimed at exploring how urbanization can be an effective tool for the integration of economic, social and environmental dimensions of sustainable development. It was organized by the Department of Economic and Social Affairs of the Secretariat, in collaboration with UN-Habitat and the Office of the Special Adviser on Africa, and with the support of United Cities and Local Governments. Habitat III featured prominently in the discussions at the integration segment.

83. The segment was chaired by the Vice-President of the Economic and Social Council, Ambassador Vladimir Drobnjak, and brought together a number of high-level leaders, including: Paul Kagame, President of Rwanda; Angelino Garzon, Vice-President of Colombia; Isabelle Picco, Vice-President of the General Assembly; and Ban Ki-moon, Secretary-General.

84. The event featured various interactive panel discussions and dialogues, as well as side events organized by Member States, the United Nations system and other stakeholders, all of which offered opportunities for invited keynote speakers and panellists, as well as ministers, mayors and other stakeholders to engage with each other on the future of urbanization and cities.

85. The segment concluded that urbanization can serve as a transformational force for achieving and advancing sustainable development. To this end, an integrated approach that engages all key stakeholders in order to produce innovative solutions to foster economic, environmental and social sustainability, will be required.

86. As stated in its report, the outcome of the integration segment would not only feed into the high-level segment of the Economic and Social Council, including the high-level political forum on sustainable development, but would also serve as the Council's contribution to Habitat III in 2016.

C. United Nations Framework Convention on Climate Change processes

87. During the reporting period, UN-Habitat participated in the processes of the United Nations Framework Convention on Climate Change, including at the nineteenth Conference of the Parties and the Climate Change Conference, held in Bonn, Germany, in June 2014. At the nineteenth Conference of the Parties, UN-Habitat contributed to the first "Cities Day" ever held at such a conference, which was attended by the Deputy Executive Director.

88. Related to the above-mentioned activities, UN-Habitat has also been involved in preparations for the Secretary-General's Climate Summit, to be held in September 2014. The Secretary-General has requested the Executive Director of UN-Habitat to lead the "cities" work stream leading up to the Summit. The recently appointed Special Envoy of the Secretary-General on Cities and Climate Change, Michael Bloomberg, is now co-leading this work stream.

89. This role involves helping to shape a set of multi-party initiatives to support action on climate change in urban areas. Among the deliverables are a "Compact of

Mayors", a "City Climate Finance Leadership Alliance", and (in the "transportation" action platform) "Urban Electric Mobility".

VI. Significant global and regional programme activities

90. In addition to organizing the seventh session of the World Urban Forum and participating in regional ministerial conferences on housing and urban development, both already described above, UN-Habitat successfully carried out two other significant global and regional activities, namely, the publication of the *Global Report on Human Settlements 2013*, and World Habitat Day and preparations for World Cities Day 2014.

A. Global Report on Human Settlements 2013

91. The main launch of the *Global Report on Human Settlements 2013: Planning and Design for Sustainable Urban Mobility*, was held on 7 October 2013, during the World Habitat Day 2013 celebrations in Medellin, Colombia. Launches were also held in numerous other locations. The report was prepared on the basis of inputs from regional, thematic and case studies (most of which have been published electronically) written by more than 150 experts from all regions, many of whom also reviewed early drafts of the report.

92. Based on extensive evidence, it is argued in the report that the traditional approach to addressing the transport problems of cities, that is, building more infrastructure for cars, is at best only a temporary solution. In fact, many of the transport challenges faced by urban transport systems — such as greenhouse gas emissions, noise and air pollution and road traffic accidents — are not necessarily addressed by the construction of new infrastructure.

93. Thus the report argues that the development of sustainable urban transport systems requires a conceptual leap. The purpose of "transportation" and "mobility" is to gain access to destinations, activities, services and goods; thus, "access" is the ultimate objective of transportation.

94. Consequently, urban planning and design should centre on how to bring people and places together by creating cities that give priority attention to accessibility, rather than simply increasing the length of urban transport infrastructure or increasing the movement of people or goods. Urban form and the functionality of the city are therefore a major focus of the report, in which the importance of integrated land-use and transport planning is highlighted. The report also provides a series of policy recommendations on how to plan and design sustainable urban mobility systems.

B. World Habitat Day 2013 and the first World Cities Day

95. The main celebrations on World Habitat Day 2013 were held on 7 October 2013 in Medellin. The theme was "Urban mobility", because mobility and access to goods and services are essential to the efficient functioning of cities and towns as they expand. Accessible cities encourage a shift towards more sustainable modes of

transportation and draw more and more travellers out of cars and onto trains, buses, bike paths and sidewalks.

96. The Medellin celebrations were held as part of the city's Week of Mobility, organized by the Municipality and the Fifth International Forum of Mobility, in which UN-Habitat is participating.

97. There was also a wide range of events and activities on the theme in London, New York, Singapore, Nairobi and many other cities, towns and assorted venues across the globe.

98. By its resolution 68/239, the General Assembly decided to designate 31 October of every year, beginning in 2014, as World Cities Day, and invited Member States, the United Nations system, in particular UN-Habitat, relevant international organizations, civil society and all other relevant stakeholders to observe and raise awareness of the Day.

99. Further to this resolution, the Shanghai City Council and the Government of China have offered to organize the global celebration of the first World Cities Day. World Cities Day is expected to greatly promote the international community's interest in global urbanization and increase cooperation among countries in meeting opportunities and challenges in urbanization and contribute to urban sustainable development around the world.

VII. Conclusions and recommendations

100. **In view of the activities related to preparations for Habitat III outlined above, Member States are called upon:**

(a) **To decide on the venue, final dates, format and organizational aspects of the conference, in line with paragraph 10 of General Assembly resolution 67/216;**

(b) **To also decide on the venue and duration of the third and final Preparatory Committee meeting, in line with paragraph 9 (d) of General Assembly resolution 67/216;**

(c) **To ensure the effective participation of local governments and all other stakeholders in the preparatory process and the conference itself;**

(d) **To expedite the preparation of Habitat III national reports and their submission to the Habitat III secretariat;**

(e) **To continue to include in their planned regional meetings, such as the regular sessions of regional ministerial conferences on housing and urban development, as well as of other relevant regional intergovernmental meetings, dialogue on Habitat III, so as to facilitate the provision of regional inputs to the conference's preparatory process;**

(f) **To ensure that the outcome document of Habitat III will build on the post-2015 development agenda;**

(g) **To support the national, regional and global preparations for the conference through voluntary contributions to the Habitat III trust fund.**

101. **With respect to urbanization and human settlements policies, Member States are called upon:**

(a) **To continue to give appropriate consideration to sustainable urbanization and human settlements in the elaboration of the post 2015 United Nations development agenda;**

(b) **To ensure that urbanization serves as a transformational force for achieving and advancing sustainable national development, as recommended in the outcome document of the first integration segment of the Economic and Social Council;**

(c) **To adopt an integrated approach to sustainable urbanization and human settlements that engages all key stakeholders in order to produce innovative solutions to foster economic, environmental and social sustainability;**

(d) **To take into account the interlinkages between the social, economic and environmental dimensions of sustainable urbanization and human settlements in the formulation of policies, plans and programmes at the local, national and international levels;**

(e) **To implement, through appropriate urban planning and design policies, sustainable transport systems that focus on accessibility and on how to bring people and places together, rather than simply increasing the length of urban transport infrastructure or increasing the movement of people and goods;**

(f) **To integrate equity in sustainable urbanization policies in order to address adequately structural problems and challenges of poverty and inequality facing many cities;**

(g) **To continue supporting UN-Habitat through predictable multiyear funding and increased non-earmarked contributions to support the implementation of the strategic plan for the period 2014-2019.**

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report prepared by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, in accordance with Human Rights Council resolutions 6/29 and 24/6.

* A/69/150.

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Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Summary

In the present report, the Special Rapporteur considers a number of critical elements that affect the effective and full implementation of the right to health framework. He begins by reaffirming the justiciability of economic, social and cultural rights, including the right to health, by reiterating the indivisibility and interdependence of all human rights and stressing the timely entry into force of the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights in 2013 and to the Convention on the Rights of the Child on a communications procedure in 2014. The Special Rapporteur then explores the concept of the progressive realization of the right to health and underlines the importance of the enforcement of State obligations through court judgements that recognize the State's capacity and incorporate monitoring by the court and civil society participation. He further focuses on the accountability deficit of transnational corporations and calls for an international mechanism to hold them liable for violations of human rights. The Special Rapporteur also urges a review of the current system of international investment agreements and the investor-State dispute settlement system with a view to creating a level playing field between transnational corporations and States. The Special Rapporteurs concludes his report with a set of specific recommendations on bridging the gaps in the full realization of the right of everyone to the enjoyment of the highest attainable standard of health.

I. Introduction

1. Article 12 of the International Covenant on Economic, Social and Cultural Rights is a comprehensive statement of the right to health. It has been elaborated and interpreted in general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights. The right to health framework set out in the general comment has empowered individuals to ensure that States respect, protect and fulfil the right to health. However, some issues need to be addressed not only within the international right to health framework, but also within the right to health in domestic law.

2. In contrast to the immediate obligations of States under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights has been seen as enumerating rights that need not be fulfilled immediately. This has resulted in the view that economic, social and cultural rights can be fulfilled separately from civil and political rights, and that the former may not be justiciable. This view overlooks the fact that economic, social and cultural rights, including the right to health, are required for the full enjoyment of civil and political rights. Furthermore, the realization of the right to health is assumed to be dependent on available resources. This view is also fallacious, as States need resources to ensure the enforcement and enjoyment of civil and political rights as well. For example, States require resources for properly equipped investigative agencies and functioning courts to ensure the right of the accused to a fair trial.

3. The fulfilment of certain obligations relating to the right to health — although not all — may depend on available resources and be progressively realized. It is important to scrutinize whether States' resources are used efficiently in realizing the right to health. It is equally important to examine the totality of those resources and review the proportion employed in ensuring the right to health. States' policies to progressively realize the right to health should be reasonable, pay special attention to vulnerable groups, be formulated with the participation of affected communities and fulfil, at a minimum, States' core obligations.

4. Globalization and market liberalization have afforded transnational corporations the opportunity to enter into domestic markets, resulting in their growing domination in world markets. While transnational corporations have the ability to influence international and domestic policies, States have been unable to regulate those corporations to prevent them from violating the right to health. The efforts that have to date been made to curb the activities of transnational corporations have been only voluntary and have not persuaded industries to prevent violations of the right to health. In addition, international investment agreements and investor-State dispute settlement systems benefit transnational corporations at the cost of States' sovereign functions of legislation and adjudication. Existing international investment agreements have no checks on the activities of transnational corporations and many do not recognize States' prerogative to legislate and enforce health-related laws. This power asymmetry is perpetuated by the fact that States often have no ability under international investment agreements to initiate disputes against transnational corporations for violating the right to health. Furthermore, investor-State dispute settlements suffer from bias, opacity and arbitrariness. They prevent affected third parties from gaining access to the system to demonstrate the violation of the third party's right to health and receive a remedy.

II. Justiciability of the right to health

5. While the enforcement of the right to health has made great strides since the development of the right to health framework, justiciability of the right remains contested. The Committee on Economic, Social and Cultural Rights confirms the justiciability of economic, social and cultural rights generally, but does not elaborate on their justiciable components.[1] All the components of the right to health are justiciable and courts have adjudicated on and enforced the specific obligations of the right to health.

6. Economic, social and cultural rights have historically been accorded less attention than civil and political rights, given that they have erroneously been seen as non-justiciable because of alleged inherent differences between the two sets of rights. Initially, only one international human rights covenant, containing both civil and political rights and economic, social and cultural rights, was envisaged. When it came to drafting that unified instrument, however, the Commission on Human Rights believed that the nature of the rights were different and convinced the General Assembly of the necessity of two separate covenants (A/2929, chap. II, para. 9). The rationale was that "[civil and political rights] were rights of the individual 'against' the State, i.e., against unlawful and unjust action of the State", while economic, social and cultural rights required States to take positive action (ibid., para. 10).

7. The division between both sets of rights is artificial, given that there is no intrinsic difference between them. Both may require positive actions, are resource dependent and are justiciable. The requirement to take "necessary steps" in the International Covenant on Civil and Political Rights (art. 2 (2)) is a positive obligation that requires time and resources (A/56/55, paras. 21-23). For example, the right to a fair trial requires States to provide courtrooms, trained professionals and other resources that require time, money and expertise to develop. The Human Rights Committee states that the International Covenant on Civil and Political Rights imposes both negative and positive obligations on States.[2] Civil and political rights were assumed to be justiciable and immediately enforceable because the necessary infrastructure and the means of enforcement already existed when the covenants were drafted.

8. The Vienna Declaration and Programme of Action stresses the indivisible, interdependent and interrelated nature of the two sets of rights. This is reinforced by the necessity of the realization of one to fulfil the other. For example, ensuring equal treatment of men and women in all spheres of their lives, such as the right to found a family, contained in article 23 (2) of the International Covenant on Civil and Political Rights, cannot be achieved unless the right to sexual and reproductive health of women is realized by ensuring their right to access health facilities, goods and services.[3]

9. Dignity underlies all human rights and was included in the Universal Declaration of Human Rights and both covenants. In its resolution 421 (V) E, the General Assembly recognized that dignity requires full enjoyment of both civil and political rights and economic, social and cultural rights. Some domestic and regional

[1] General comment No. 9 (1998), para. 10.

[2] Human Rights Committee, general comment No. 31 (2004), paras. 6-8.

[3] Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 14.

courts have torn asunder the artificial division between the two sets of rights by developing a justiciable right to health through the recognition of dignity. For example, the Supreme Court of India found that to "enhance the dignity of the individual" the right to life should include the right to the basic necessities of life.[4] That right has itself become a stand-alone aspect of the right to health. The Inter-American Court of Human Rights views the right to life as containing a positive obligation to "generat[e] minimum living conditions that are compatible with the dignity of the human person", which includes providing the underlying determinants of health for vulnerable groups.[5]

10. The right to health imposes overlapping obligations of immediate effect on States. They include the immediate obligations of non-discrimination and to take steps towards the progressive realization of rights, the core obligation to ensure the minimum essential levels of the right and the obligations to respect and protect. Immediate obligations are outside the ambit of article 2 (1) of the International Covenant on Economic, Social and Cultural Rights. Core obligations are the minimum essential level of a right[6] and are not progressively realized. Duties to respect and protect are akin to obligations under the International Covenant on Civil and Political Rights to respect and ensure — because the duty to ensure includes the duty to protect[7] — which indisputably are justiciable.

11. These obligations of immediate effect may in fact be dependent on resources for their implementation. For example, States may not want to provide expensive medicine, but in cases of essential medicines, they are required to fulfil this obligation.[8] Even if an obligation of immediate effect depends on resources, a State may not rely on the lack of resources as a defence or excuse for not fulfilling the obligation.

12. The inherent justiciability of these components of the right to health has been demonstrated by the decisions of regional and domestic courts.

13. Courts are experienced in adjudicating the immediate obligation of non-discrimination with regard to health. For example, in *Eldrige v. British Columbia (Attorney General)*, the Supreme Court of Canada found that the Medical and Health Care Services Act discriminated against deaf and hard of hearing people because its lack of provision for sign language interpreters denied them equal benefits under the law.

14. As the United Nations High Commissioner for Human Rights noted in a report to the Economic and Social Council, retrogressive measures are presumptively a violation of the obligation to take steps towards the progressive realization of economic, social and cultural rights (E/2007/82, para. 19). States have the burden to demonstrate that retrogression is not a violation, making the adjudication necessary to determine whether a violation in fact occurred. Retrogression was assessed in decision No. 39/84 of 1984 of the Constitutional Court of Portugal in a case where the Government had attempted to repeal the law that established the National Health

[4] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and others*, 1981, paras. 6 and 8.

[5] *Yakye Axa Indigenous Community v. Paraguay*, judgement of 17 June 2005, paras. 162-165.

[6] See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 10.

[7] Human Rights Committee, general comment No. 31, para. 8.

[8] *Delhi High Court, Mohd. Ahmed (Minor) s. Union of India*, April 2014, para. 68.

Service. The Court found that, once a State fulfils a constitutional obligation, the Constitution protects against abolishment, turning the obligation from a purely positive one to both a positive and a negative obligation.

15. Core obligations have been adjudicated under the right to life, which obliges the State to ensure the necessities for life. For example, the Supreme Court of Argentina, in *Reynoso* (2012), found that the State had an obligation to guarantee people access to basic goods and services necessary for their health and life.

16. Courts have enforced obligations to respect and protect with regard to the right to health. The African Commission on Human and Peoples' Rights elaborated, in *Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria*, that the obligation to respect within the right to health requires a State "to respect the free use of resources" of an individual or group "for the purpose of rights-related needs".[9] In *Marangopoulos Foundation for Human Rights v. Greece*, the European Committee of Social Rights held that the State must engage in stronger regulatory practices to protect air quality, including the regulation of private actors, to protect its obligation under the right to health.[10]

17. Only judicial or quasi-judicial bodies and not purely administrative mechanisms can provide access to effective remedies as required by the right to health framework. Effective remedies require an adjudicator to provide appropriate reparation. Only an adjudicator can assess whether the right to health has been violated and provide reparation that includes restitution and guarantees of non-repetition. Restitution often requires imposing an obligation on a third party, such as requiring a hospital to provide essential medicines, and guarantees of non-repetition can be obtained only through structural policy changes that involve other government agencies. Administrative remedies are limited to violations of the relevant statute, and the scope of the statute does not allow the imposition of obligations on other agents and thus cannot provide effective remedies.

18. Any debate about the general justiciability of the right to health ended with the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on 5 May 2013 and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure on 14 April 2014. It is recommended that States ensure that the right to health is justiciable in their domestic jurisdictions. Most individual obligations of the right to health are clearly justiciable, and only obligations to fulfil that are progressively realizable require further analysis to confirm their justiciability.

III. Progressive realization of the right to health

19. Similar to other economic, social and cultural rights, and in keeping with article 2 (1) of the Covenant, the right to health allows States to realize some rights progressively. The progressive realization of the right to health obligations is premised on the understanding that States with limited resources may have the capacity to implement health programmes only in a phased manner.

[9] Communication No. 155/96, 2001, para. 45.

[10] Complaint No. 30/2005, 2006, para. 203.

20. The reliance on States' available resources to realize the right to health adds complexities to an adjudicator's ability to decide such issues. For example, adjudicating whether the State has taken steps to the maximum extent of its available resources may involve the determination of the extent of the State's available resources. Adjudicators have, however, been loath to scrutinize statements concerning the available resources proffered by States because decisions on budgetary allocations are generally deemed to be within the purview of the legislature and executive, and thus outside the proper scope of judicial inquiry. In *Soobramoney v. Minister of Health, KwaZulu-Natal* (1998), the Constitutional Court of South Africa concluded that people with chronic renal failure were not entitled to dialysis treatment by the State free of cost, as were emergency cases of renal failure. The petitioner's right to receive dialysis treatment was analysed under the constitutional obligation of South Africa to progressively realize its citizens' right to health and its obligation to provide emergency health care. The Court found that the Government had proved that no funds were available to provide all persons with chronic renal failure with dialysis treatment free of cost and that it therefore had to accord priority to emergency care. The Court reached that conclusion after reviewing evidence that the Department of Health had already overspent its budget. It did not delve further into whether the amount allocated was sufficient to achieve a reasonable level of health.

21. Adjudicators' inability or reluctance to inquire into budgetary allocations affecting the amount of resources available may be fostered in part by the fact that the term "available resources" has not been clearly defined within the right to health framework or general comment No. 3. Available resources could be interpreted in diverse ways. It could mean a State's entire gross domestic product or a specified percentage thereof, or it could be limited to the amount allocated to the State's health budget or limited to the amounts allocated to a particular health concern. Furthermore, although general comment No. 3 indicates that available resources include resources available through international assistance (para. 13), it falls short of clarifying whether available resources cover the amount actually available or the amount that could have been available had the State exerted itself in obtaining such aid. Moreover, the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights indicate that States have an obligation to develop societal resources as a way of increasing their available resources, but do not indicate whether available resources should include the amount of societal resources that a State could reasonably develop but has not yet developed (para. 24). It is clear, however, that the term "available resources" refers to the totality of a State's "real" resources (e.g. informational, technical, organizational, human, natural and administrative) above and beyond budgetary allocations.[11] Adjudicators reviewing the amount of available resources proffered by States should keep in mind that the State is required to administer the existing budget efficiently and mobilize additional resources, which may include, for example, changes to the State's taxation policy or smart incurrence of debt.[12]

[11] See Rory O'Connell and others, *Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources* (London, Routledge, 2014), chap. 3.

[12] Diane Elson, Radhika Balakrishnan and James Heintz, "Public finance, maximum available resources and human rights", in A. Nolan, R. O'Connell and C. Harvey, eds., *Human Rights and Public Finance: Budget and the Promotion of Economic and Social Rights* (Oxford, United Kingdom of Great Britain and Northern Ireland, Hart, 2013).

22. Sufficient resources available to a State should, however, be allocated to achieve the realization of other economic, social and cultural rights, in addition to the plethora of competing demands on the State. When considering allocation to other competing economic, social and cultural obligations, those of an immediate or core nature should take precedence. Available resources should imply the maximum amount of resources that can be allocated to a specific health objective without compromising other essential services.[11]

23. Although what constitutes available resources will differ by context, the term requires elaboration in order to guide States and assist adjudicators in deciding whether the amount of available resources proffered by States is acceptable. Even if adjudicators do not give directions with regard to the allocation and use of resources, they should closely scrutinize the State's view of the amount of maximum resources available to them, given that it is the Government's burden to demonstrate that the amount of its available resources does not permit the fulfilment of some State obligations. This may require adjudicators to scrutinize the budget to determine whether the allocation to the health sector or to a particular health goal is inadequate. A State's decreasing budgetary allocation for its right to health obligations vis-à-vis its increasing gross domestic product or increasing allocation to areas other than those relating to human rights may be evidence that the State has chosen not to allocate available resources to fulfil that right, which may evidence a breach of its progressively realizable obligations.[11] Adjudicators should also inquire as to whether the State has sufficiently exerted itself in obtaining international aid or developing societal resources to expand the amount of resources available. States should be obliged to provide information regarding the calculation of their available resources, budget allocations and efforts to increase the available resources in an open and transparent manner to facilitate a full and fair review by the adjudicator.

24. Where a progressively realizable obligation has a core component, adjudicators should inquire as to whether the State has fulfilled its obligation in that regard. When such rights have not been safeguarded, courts have found violations of the relevant right without even delving into an analysis of a State's available resources. For example, the Inter-American Court of Human Rights noted that the State obligation to guarantee access to a decent life must be read in view of the State's progressively realizable obligations set forth in article 26 of the American Convention on Human Rights.[13] However, the Court did not use the concept of progressive realization to qualify the obligation of the State to provide minimum living conditions that were compatible with the dignity of the human person, but rather found that the State had breached the claimants' right to life and was required to provide, inter alia, medicine, food, clean water and sanitation facilities.[14] Thus, in accordance with the core obligations under the right to health framework, where adjudicators determine that certain fundamental human rights have been violated, they may find that the State has breached its relevant obligations without delving into the question of whether the State had the available resources to satisfy such obligations.[15]

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[13] *Yakye Axa Indigenous Community v. Paraguay*, judgement of 17 June 2005, para. 163.

[14] Ibid., paras. 176 and 221.

[15] See Inter-American Court of Human Rights, *Sawhoyamaxa Indigenous Community v. Paraguay*, judgement of 29 March 2006; *Ximenes-Lopes v. Brazil*, judgement of 4 July 2006.

25. Courts have also adjudicated the utilization by the State of available resources vis-à-vis existing policies and the obligation of non-retrogression. In a case where the court held that lack of available resources cannot be a justification for retrogression of policies, it unambiguously expressed that benefits promised under health-care programmes should be delivered and issued directions to the Government to that effect.[16] Moreover, should the adjudicators find that a sum has been allocated to the realization of a particular health right but has not been used, or such sum has been diverted to another use, they should hold that the State is not using the maximum of its available resources and may therefore be in violation of its progressively realizable obligations.[11] It is worth noting, however, that resources allocated to non-health rights may have the effect of improving access to and availability and quality of health facilities, goods and services. For example, funds spent on roads can improve access to medical clinics.[12]

26. For a State to be in compliance with its progressively realizable obligations, the amount of available resources must be efficiently allocated. Available resources should be considered efficiently allocated if such allocation reduces barriers to non-discriminatory access to available and acceptable-quality health facilities, goods and services. Failure to curb corruption, which results in the inefficient use of resources, may be considered a breach of a State's progressively realizable obligations.[12] States must also ensure that what appears to be greater efficiency is not simply masking the transfer of such costs to non-State actors. For example, a policy that encourages patients to spend less time in the hospital, thus reducing the financial cost per treatment, may in reality shift those costs to the patient's home caregivers.[12]

27. Some domestic courts have focused on judicial review of the process, rather than the substance, of policymaking. Courts have confirmed that a State is in compliance with its progressively realizable obligations if the policymaking process was reasonable.[17] The Constitutional Court of South Africa, for example, has considered the following factors in determining whether a housing policy and a water distribution policy was "reasonable": consideration given to vulnerable groups and emergency situations; flexibility of the policy to being updated upon continuing governmental review; attention paid to the short-term, medium-term and long-term needs; a transparent, participatory and well-considered process; efficient implementation of the policy; equitable coverage; retrogression in policy; and whether discrimination was tied to a legitimate government policy.[18] Even where adjudicators find that the process has been reasonable, they may also review whether the implementation of the policy has resulted in a disproportionately negative impact on a particular vulnerable group, which may evidence a breach of the State's progressively realizable obligations.

28. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights also requires the Committee to "consider the reasonableness of the steps taken by the State Party" (art. 8 (4)). The Committee has laid out several considerations to be taken into account when determining reasonableness, such as

[16] High Court of Delhi, *Laxmi Mandal v. Deen Dayal Haringagar Hospital and others*, 2010, paras. 61-70.

[17] See Constitutional Court of South Africa, *Minister of Health v. Treatment Action Campaign*, 2002; High Court at Nairobi, *Okwanda v. Minister of Health and Medical Services and others*, 2013.

[18] *South Africa v. Grootboom*, 2001; *Mazibuko and others v. City of Johannesburg and others*, 2009.

whether measures were deliberate, concrete and targeted; whether non-discrimination and non-arbitrariness were ensured; whether allocation of resources was in accordance with international human rights standards; whether the policy utilized the least restrictive option; the time frame of the policy; and whether the situation of vulnerable groups was taken into account (E/C.12/2007/1, para. 8). Vulnerable groups should not be limited to those specific groups mentioned in general comment No. 14, but should include any group that is disproportionately affected by a particular ailment or otherwise marginalized on account of its members' political, social or economic exclusion; discrimination and stigmatization suffered by that group; restrictions in law or in practice on giving informed consent or exercising full autonomy by members of that group; or the group's inability to enforce rights, gain access to State benefits or enjoy regulatory protection.

29. In reviewing whether a State has fulfilled its obligations under the Covenant, it is important to consider that even well-considered policies making use of a State's maximum available resources may lead to poor health outcomes owing to external circumstances, such as an influx of refugees, an outbreak of an epidemic or an economic recession. Even in such cases of resource constraint, States should fulfil their core obligations and other immediate obligations without discrimination. States should not be allowed to use external circumstances as an excuse for retrogressive measures such as cutting certain health-related policies as part of a redistribution of funds from the health sector.

IV. Enforcement of the right to health

30. Enforcement of a State's obligations is essential to the enjoyment of the right to health. Unfortunately, many legal judgements on economic, social and cultural rights are not fully implemented by States. To promote the implementation of judgements, adjudicators are encouraged to develop specific and targeted decisions that recognize the State's capacity and include monitoring by the court and civil society participation.

31. Courts should be mindful of the context and objectives when designing specific directions for the implementation of judgements containing positive obligations. Judgements that provide a framework of specific processes for specific agencies may overcome barriers to implementation that a general judgement does not. This approach, rather than dictating specific objectives, can mitigate concerns of violating separation of powers. In the landmark *T-760/08* judgement (2008) that led to systemic change of the Colombian health-care system, the Constitutional Court of Colombia did not dictate reforms but gave direction to policymakers to define objectives, develop appropriate policies, build institutional capacity and justify each decision with information.[19] With regard to progressively realizable obligations in particular, courts should consider that any reform must be sustainable in order to increase social acceptance of the judgement and ensure a sustainable health system.[20]

[19] See Manuel José Cepeda-Espinoza, "Transcript: social and economic rights and the Colombian Constitutional Court", *Texas Law Review*, vol. 89, p. 1703.

[20] Ibid., p. 1701.

32. Monitoring is critical for the full implementation of complex judgements. The writ of continuing mandamus has been used by the Supreme Court of India to provide continuous judicial oversight of agencies when a traditional writ of mandamus could not overcome agency inertia.[21] The Constitutional Court of Colombia developed a special monitoring chamber to oversee the implementation of *T-760/08* and devoted a section of its website to all the orders enforcing the judgement.[22] To maximize implementation, monitoring by the court should be done in conjunction with public participation.[23]

33. Meaningful participation by affected communities and other stakeholders, together with access to health information, is not only an essential element of the right to health,[24] but also a critical tool for monitoring implementation. Courts are positioned to promote access to information as part of implementation monitoring, or even to find a constitutional right to receive accurate health-related information from public officials.[25] Participating stakeholders can support implementation jointly with the State by providing technical expertise and communicating the interests of affected communities.

34. States are encouraged to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and recognize the competence of the Committee on Economic, Social and Cultural Rights to receive and consider inter-State communications. Enforcement through the Optional Protocol will further develop the content and jurisprudence of the right to health. Health-related cases have been adjudicated at the international level, for example in the *Alyne da Silva Pimentel v. Brazil and L.C. v. Peru* cases before the Committee on the Elimination of Discrimination against Women.[26] While the Committee adopted decisions calling for specific remedies for the complainants in those cases, it also adopts general recommendations that promote policy change. General recommendations are necessary to promote the enjoyment of the right to all similarly affected people, not only the authors of communications. They should be incorporated into friendly settlements between the parties, with input from third parties, because States can use friendly settlements to provide remedies not only for the author but for all similarly affected people.

35. States, whether directly or indirectly, may have an impact on the enjoyment of the right to health within another State. If a State is unable to protect the right to health of its people from foreign actors using domestic mechanisms, it is encouraged to use the inter-State communications mechanism under the Optional Protocol to do so.

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[21] See *Vineet Narain and others v. Union of India and another*, 1998.

[22] See Constitutional Court of Colombia, Seguimiento al cumplimiento de la Sentencia T-760 de 2008 (Monitoring compliance with judgement T-760 of 2008).

[23] See César Rodríguez-Garavito, "Beyond the courtroom: the impact of judicial activism on socioeconomic rights in Latin America", *Texas Law Review*, vol. 89, p. 1694.

[24] See general comment No. 14, para. 12 (b) (iv).

[25] See Constitutional Court of Colombia, *T-627/12*, judgement of 10 August 2012, p. 125.

[26] Communication No. 17/2008, views adopted on 25 July 2011, and communication No. 22/2009, views adopted on 17 October 2011.

V. Transnational corporations

36. Globalization and trade liberalization have allowed transnational corporations to gain greater and easier access to otherwise closed markets. Their increasing presence in the world economy has enabled them to influence international and domestic law-making and infringe upon States' policy space. They have influenced food consumption patterns[27] and promoted the use of tobacco, especially in developing countries.[28] They have also affected the rights of large communities with impunity, causing displacement,[29] contamination of groundwater[30] and loss of livelihood.[31] They have directly perpetrated serious human rights violations, in particular in developing and least developed countries.[32] They have thus seriously affected the laws, policies and social and economic environments of States and have violated the economic, social and cultural rights of individuals and communities, including the right to health.

37. It may be difficult for States or affected individuals to hold foreign transnational corporations accountable for harmful actions that were orchestrated through their domestic subsidiary. The involvement of multiple jurisdictions may effectively protect transnational corporations from liability for their human rights violations[33] or may lead to protracted litigation in multiple forums.[34]

38. The magnitude of violations by transnational corporations and the ease with which they can evade responsibility for such violations call for an international mechanism to hold them liable for human rights abuses. Such a mechanism should supplement domestic laws rather than diminish the importance of domestic law. The mechanism should therefore enable States and individuals to hold transnational corporations to account for their human rights violations.

39. Previous efforts made in international forums to confer obligations on transnational corporations have resulted only in voluntary guidelines.[35] In 2003, the Subcommission on the Promotion and Protection of Human Rights approved norms

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[27] See Corinna Hawkes, "Uneven dietary development: linking the policies and processes of globalization with the nutrition transition, obesity and diet-related chronic diseases", *Globalization and Health*, vol. 2, No. 4 (2006).

[28] See M. Otañez, H. Mamudu and S. Glantz, "Tobacco companies' use of developing countries' economic reliance on tobacco to lobby against global tobacco control: the case of Malawi", *American Journal of Public Health*, vol. 99, No. 10 (October 2009).

[29] See Human Rights Watch, "*How Can We Survive Here?": The Impact of Mining on Human Rights in Karamoja, Uganda* (2014).

[30] See N. Cingotti and others, "No fracking way: how the EU-US trade agreement risks expanding fracking", Issue Brief (Transnational Institute, March 2014).

[31] Office of the United Nations High Commissioner for Human Rights, "India: urgent call to halt Odisha mega-steel project amid serious human rights concerns". Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13805&LangID=E.

[32] Olivier De Schutter, "The accountability of multinationals for human rights violations in European law", New York University School of Law, Center for Human Rights and Global Justice Working Paper No. 1, 2004.

[33] Amnesty International, "India: court decision requires Dow Chemical to respond to Bhopal gas tragedy", 3 July 2013.

[34] Reuters, "Ecuador plaintiffs file lawsuit in Canada against Chevron", 30 May 2012.

[35] The Guidelines for Multinational Enterprises adopted by the Organization for Economic Cooperation for Development in 1976; the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy adopted by the International Labour Organization in 1977; and the United Nations Global Compact initiated by the Secretary-General in 1999.

on the responsibilities of transnational corporations and other business enterprises with regard to human rights (E/CN.4/Sub.2/2003/12/Rev.2), which sought to confer non-voluntary direct obligations on transnational corporations and business enterprises. The Commission on Human Rights did not adopt the norms, owing in part to strong opposition from States and business entities. In 2005, the Commission, in resolution 2005/69, requested the Secretary-General to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises.

40. The Special Representative submitted, in his final report in 2011, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex). The first pillar, protect, reflects the existence in international human rights law of a binding obligation on States to protect individuals from actions of third parties. The pillar requires States to take measures such as instituting laws to hold transnational corporations accountable for their transgressions (principle 1). It could be argued, however, that the State obligation to protect, which is already an important obligation of States under international human rights law, has been ineffective against transnational corporations.

41. The second pillar reflects the obligation of transnational corporations to respect human rights (principle 11). Pursuant to the responsibility to respect, transnational corporations have a responsibility to conduct due diligence to identify and address adverse human rights impacts caused by their activities; such due diligence should involve the participation of affected communities (principle 18, commentary). However, because the framework and Guiding Principles reflect existing international law standards and reflect the responsibility to respect only as based on "a global standard of expected conduct" for corporations rather than specific obligations enshrined in binding treaty provisions (principle 11, commentary), it has been argued that there is no legally binding obligation requiring transnational corporations to conduct this due diligence.[36] The rationale appears to be that non-binding responsibilities make good market sense, which itself should provide incentives for transnational corporations to comply with their pledges. For example, the Guiding Principles mention that compliance with responsibilities may be ensured where a transnational corporation institutes policies and procedures that set financial and other performance incentives for personnel.[37] However, providing incentives for compliance makes respect for rights a means to attain an end (the promised incentive), but does not foster respect for rights in and of themselves.

42. The third pillar of the framework requires States to ensure individuals' access to an effective remedy through judicial, administrative, legislative or other appropriate means when abuses occur within their territory and/or jurisdiction (principle 25). An aspect of access to remedy is that corporations should establish or participate in effective, operational-level grievance mechanisms (principle 29). Given that access to remedy is an aspect of States' obligation to protect, however,

[36] See Olga Martin-Ortega, "Human rights due diligence for corporations: from voluntary standards to hard law at last?", *Netherlands Quarterly of Human Rights*, vol. 32, No. 1 (March 2014), pp. 55-57.

[37] Ibid., p. 16.

States' inability or unwillingness to hold transnational corporations accountable may lead to a lack of available and effective remedies against the corporations.[38]

43. The Guiding Principles also fail to take into consideration the existing political context, whereby developing countries may be vulnerable to undue influence from transnational corporations. Business interests may be protected at the cost of the human rights of those affected communities that remain dependent on States to hold corporations accountable for violations. Non-binding responsibilities have therefore not prevented transnational corporations from violating human rights.[39]

44. In this regard, the Special Rapporteur notes with satisfaction the adoption of resolution 26/9 by the Human Rights Council in which the Council decided to establish an open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights with the mandate to elaborate an internationally legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. The Special Rapporteur welcomes this opportunity to develop an instrument that will remedy the current imbalance between corporations, States and individuals.

45. There is an urgent need for an international instrument that can address the increasing complexities presented by transnational corporations' multi-jurisdictional organization and global influence. Moreover, because not all States have a robust regulatory mechanism, owing either to their poor negotiating power or because they are unwilling to hold domestic corporations accountable for harms caused, obligations should also be conferred on domestic corporations.

46. Along with the required accountability and monitoring mechanisms, a strong and effective enforcement mechanism is needed to remedy and discourage violations. An adjudicatory mechanism to examine individual or State complaints against transnational and domestic corporations should be established. Individuals should have the right to remedy both in their home State and in the home State of the transnational corporation where the latter does not regulate those activities of the corporation that violate the individual's right to health.

47. In the meantime, a declaration along the lines of the Universal Declaration of Human Rights could be adopted conferring specific human rights obligations on private corporations, especially transnational corporations. Imposing specific human rights obligations would provide a structure to the rights and obligations involved in this paradigm.

A. International investment agreements

48. To encourage economic activity and attract investment, States, especially those that are developing and least developed, may enter into international investment

[38] See Iman Prinhandono, "Transnational corporations and human rights violations in Indonesia", *Australian Journal of Asian Law*, vol. 14, No. 1 (2013), pp. 1-23; and G. Wass and C. Muslime, *Business, Human Rights, and Uganda's Oil. Part II: Protect and Remedy: Implementing State Duties under the UN Framework on Business and Human Rights* (ActionAid International Uganda and International Peace Information Service, 2013).

[39] See Chris Albin-Lackey, "Without rules: a failed approach to corporate accountability", in Human Rights Watch, *World Report 2013*.

agreements. Such agreements allow transnational corporations to reduce States' policy space and have been instrumental in increasing the influence of transnational corporations on States' ability to institute public health policies.[40]

49. International investment agreements are treaties concluded between two or more States that facilitate an enabling economic environment for transnational corporations to invest in host States. They are promoted as tools to boost domestic economies but may have the effect of overriding States' sovereignty. In some States, business executives may enter into such agreements and bind States without any discussion among, or the agreement of, elected representatives. In addition, States may not be able to terminate such agreements without facing economic and financial consequences. Given that the agreements are concluded between States, they do confer no obligations on transnational corporations to respect, protect and fulfil the right to health, allowing corporations to continue profit-making activities even if they are violating individuals' right to health.

50. The rights to information and to participate in the decision-making process are essential for the enjoyment of the right to health. Those elements of the right to health framework are undermined when international investment agreements are negotiated and concluded in secrecy. Affected communities should be able to participate in negotiations. Making information regarding the negotiations public can allow communities and civil society organizations to pressure States to refrain from signing such agreements or to assist States in asserting themselves during negotiations, which may facilitate the exclusion of provisions that may result in a breach of human rights.

51. The right to access information has been denied to affected communities on the grounds that disclosure of such information may harm the State's economic interest and should therefore be kept confidential.[41] Disturbingly, the practice of withholding information from stakeholders such as civil society groups has been held to be non-discriminatory, even where the same information was provided to corporations with the justification that corporations have expertise in matters relating to free trade agreements.[42] Such inequity in access to information can enable corporations to influence the content of an international investment agreement in their favour.

52. International investment agreements benefit transnational corporations as investors because such corporations are granted rights protective of their investments in the host State, such as the right to fair and equitable treatment. Transnational corporations also have the right to initiate disputes before international commercial arbitration tribunals for alleged violations by the host State and for State infringement on the corporation's profit-making activities or potential profits. States, on the other hand, may be unable to initiate disputes against investors because transnational corporations, as non-signatories, have no obligations under

[40] See Eric Peterson and Kevin Gray, "International human rights in bilateral investment treaties and in investment treaty arbitration", International Institute for Sustainable Development, 2003.

[41] See Central Information Commission (India), *D. G. Shah v. Ministry of Commerce and Industry, Department of Industrial Policy and Promotion*, 2011.

[42] See European Court of Justice, *Stichting Corporate Europe Observatory v. European Commission*, case T 93/11, judgement of 7 June 2013.

international investment agreements.[43] Such agreements perpetuate and exacerbate an asymmetrical relationship between investors and States.

53. International investment agreements impose obligations on States vis-à-vis investors that may affect States' power to introduce health laws in the public interest. States may have to modify their laws to accommodate investors' rights, even though such modifications may increase the risk of violating individuals' right to health. Free trade agreements, for example, may limit the enjoyment of the right to health of individuals by preventing States from using the public health flexibility under the Agreement on Trade-Related Aspects of Intellectual Property Rights.[44] Pharmaceutical companies may be able to challenge the patent laws of host States if such laws do not comply with investors' rights under the free trade agreement, even though such patent laws may be compliant with the Agreement on Trade-Related Aspects of Intellectual Property Rights. States may thus be unable to check the increasing cost of medicines, which undermines their core obligation to ensure access to health facilities, goods and services, including essential medicines, especially for vulnerable groups.

54. International investment agreements may provide for exceptions that can be used by States to defend laws in the public interest, such as public health laws. Even where international investment agreements contain such exceptions, however, investor rights may trump them. After Uruguay had entered into a bilateral investment treaty with Switzerland, it adopted public health measures on the packaging and advertisement of cigarettes, in accordance with local laws, which were enacted pursuant to the World Health Organization Framework Convention on Tobacco Control. Although those measures accorded with the public health exception in the bilateral investment treaty, Phillip Morris International initiated a dispute against Uruguay, claiming that its law was unreasonable and breached the guarantee of fair and equitable treatment.[45]

55. International investment agreements are treated as a stand-alone legal code and often do not contain references to the right to health. They should, however, be interpreted in a manner that does not conflict with human rights law because the purpose of both development-stimulating investment treaties and human rights laws is to benefit individuals. Under the current regime, States may be vulnerable to dispute settlement procedures when a State breaches an obligation under the agreement in order to comply with its human rights obligations. This was the case when the Ethyl Corporation submitted a claim against a public health decision by the Government of Canada to impose a trade ban on a controversial gasoline additive produced by Ethyl Corporation.[46] In another case, the tribunal noted that, though the claimant's property was expropriated in furtherance of environmental

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[43] M. Toral and T. Schultz, "The State, a perpetual respondent in investment arbitration? Some unorthodox considerations", in Michael Waibel and others, eds., *The Backlash against Investment Arbitration: Perceptions and Reality* (Kluwer Law International, 2010), p. 578.

[44] Joint United Nations Programme on HIV/AIDS, *The Potential Impact of Free Trade Agreements on Public Health* (Geneva, 2012).

[45] See International Centre for Settlement of Investment Disputes, *Phillip Morris Brands Sàrl, Phillip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, case No. ARB/10/7, decision on jurisdiction of 2 July 2013.

[46] *Ethyl Corporation v. Canada*, award on jurisdiction judgement of 24 June 1998.

public interests and legitimate, expropriation by the State "did not alter the legal character of the taking for which adequate compensation must be paid".[47]

56. The high cost of arbitration and the threat of an adverse judgement can create a chilling effect on States, dissuading them from fulfilling their right to health obligations.[48] These disputes may also deplete States' resources, which can affect their ability to progressively realize the resource-dependent aspects of the right to health.

57. Although international investment agreements may contribute to the economic development of a country, States should ensure that protection of human rights, including the right to health, is incorporated into those agreements. Human rights must be respected, protected and fulfilled at all times, and should be the primary concern of all action by States. International investment agreements should therefore expressly provide for States' human rights obligations, which should be able to override investors' rights in specific cases.

58. The ability of individuals to enjoy their right to health cannot be subject to contractual rights of investors, given that the right to health is fundamental to the dignity of individuals.

59. States should review the current system of investment treaties to create a level playing field. During negotiation, review or renegotiation, international investment agreements should ensure that States have the right to change laws and policies in furtherance of human rights, regardless of the impact of such change on investor rights. Some 40 States have already begun renegotiating bilateral investment treaties to minimize their vulnerability to disputes and to limit investor rights.[49] In 2011, Australia amended its trade policy to exclude provisions in trade agreements that could "limit its capacity to put health warnings or plain packaging requirements on tobacco products or its ability to continue the Pharmaceutical Benefits Scheme"[50]. Until international law can hold transnational corporations directly accountable for their violations of human rights, States should incorporate provisions in international investment agreements that enable States to hold transnational corporations liable for such violations under the domestic law of either the home or the host State. States should also ensure that their ability to implement human-rights-friendly laws is not in any way hindered by the agreement.

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[47] See International Centre for Settlement of Investment Disputes, *Compania del Desarrollo de Santa Elena S.A. v. The Republic of Costa Rica*, case No. ARB/96/1, 17 February 2000, para. 71.

[48] D. Gantz, "The evolution of FTA investment provisions: from NAFTA to the United States-Chile Free Trade Agreement", *American University International Law Review*, vol. 19, No. 4 (2003), p. 684.

[49] See Mahnaz Malick, "Recent developments in international investment agreements: negotiations and disputes", International Institute of Sustainable Development, 2011; Y. Haftel and A. Thompson, "When do States renegotiate international agreements? The case of bilateral investment treaties", 2013; United Nations Conference on Trade and Development, http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d6_en.pdf.

[50] See D. Gleeson, K. Tienhaara and T. Faunce, "Challenges to Australia's national health policy from trade and investment agreements", *Medical Journal of Australia*, vol. 196, No. 5 (2012), quoting the Department of Foreign Affairs and Trade of the Government of Australia.

B. Investor-State dispute settlement

60. International investment agreements include an arbitration clause for investor-State dispute settlements that can be invoked only by transnational corporations against host States for alleged violations of the corporation's rights. The arbitration clause determines the place of arbitration, the applicable law and the procedure for appointing arbitrators. As at 2013, there were 568 known cases of arbitration under international investment agreements. Most were brought against developing States. A total of 85 per cent of the cases were brought by investors from developed countries.[51] The system is riddled with problems.

61. The number of arbitration cases filed against States is likely to rise in times of financial crisis. For example, since its financial crisis in 2001 and the introduction of economic reforms, Argentina has faced more than 50 arbitration cases.[51] Similarly, Spain and Greece saw a sharp increase in arbitration cases against them after their financial crises[52] and more than 10 arbitration cases were registered against Egypt after the Arab Spring.[53] In such crises, States may need to realign their economic and social policies within the changed climate. Although such changed policies may be in the public interest, the altered policies might threaten investments and prevent States from fulfilling their obligations under the international investment agreement.

62. The current system of investor-State dispute settlement also suffers from bias and conflicts of interest. The dispute settlement is controlled by a small clique of arbitrators and lawyers, and the same person may be counsel, arbitrator and adviser to an investor or State at different times.[54] Many arbitrators share close links with business communities and may be inclined towards protecting investors' profits.[55] This can affect the independence and neutrality of arbitrators, is contrary to the principle of fairness and further compromises the integrity of arbitration under international investment agreements.

63. Annulment applications by States on the ground of bias have in many instances been rejected. In one case, the State argued for the recusal of an arbitrator on the ground that the award would be used to further the arbitrator's argument as counsel in another case.[56] The State lost. An issue of bias also arises where an arbitrator has an interest in the investor's business. In one such case, the State's application to annul the award was rejected because there was "no material effect on the final decision of the Tribunal, which was in any event unanimous".[57]

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[51] See http://unctad.org/en/Docs/webdiaeia20113_en.pdf.

[52] See Cecilia Olivet and Pia Eberhardt, *Profiting from Crisis* (Amsterdam/Brussels, Transnational Institute and Corporate Europe Observatory, March 2014).

[53] See www.brownrudnick.com/news-resources-detail/2013-10-beyond-the-realm-of-icsid-al-kharafi-sons-co-vs-libya.

[54] See International Centre for Settlement of Investment Disputes, *Azurix Corporation v. The Argentine Republic*, case No. ARB/01/12, 14 July 2006.

[55] See Cecilia Olivet and Pia Eberhardt,, *Profiting from injustice*, ((Amsterdam/Brussels, Transnational Institute and Corporate Europe Observatory, November 2012).

[56] See *Eureko v. Poland*, judgement of 22 December 2006 of the court of first instance of Brussels.

[57] International Centre for Settlement of Investment Disputes, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, case No. ARB/97/3, annulment proceeding, paras. 234-235.

64. The amount of compensation awarded runs into millions of dollars and is an additional blow to developing States, especially those undergoing or recovering from crisis. For example, in *Al-Kharafi v. Libya*, the claimant was awarded more than $935 million.[58] The enormous size of such awards can have a negative effect on the State's ability to implement health policies. For example, in *CME v. Czech Republic*,[59] the compensation awarded to the investor was equal to the entire health budget of the State.[60] States may also have to bear not only legal costs incurred by them during arbitration but also those incurred by the successful claimant.[61] Even where States are successful, they may have to pay a heavy fee for the arbitrators.[62]

65. Moreover, arbitration proceedings are opaque. Except in some cases, no public notice of the arbitration may be issued.[63] Persons not party to the arbitration are often unable to participate in the process as amicus or as an audience to the proceedings. Under some rules, however, non-disputing parties may be able to make submissions under very limited circumstances and at the discretion of the tribunal.[64] In addition, arbitration proceedings are conducted in camera, which prevents persons from following the arbitration unless, as is allowed under some rules, both parties agree to hold an open hearing.[65] Furthermore, the award of the tribunal is often binding on the parties, with no appeal permitted.[66]

66. A public, democratic, open and accountable system of domestic courts has been replaced with private, closed and unaccountable arbitration. Arbitration lacks a system for review that can check arbitrariness. The opaque nature of arbitration, under which some awards are not even made public, protects the parties from the accountability that ensues from an open and transparent system.

67. A transparent and open arbitration system, accountable to communities in host States, should be established urgently to remedy problems plaguing the current system. Arbitration should also be conducted in host States, to facilitate access by affected communities. Disputes could be decided by a panel of arbitrators, selected from an international, permanent and regionally representative pool. Arbitrators should not be allowed to practise as counsel or advisers to investors or States in cases of arbitration.

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[58] See www.italaw.com/sites/default/files/case-documents/italaw1554.pdf.

[59] See http://italaw.com/documents/CME-2003-Final_001.pdf.

[60] M. Desai and A. Moel, "Czech mate: expropriation and investor protection in a converging world", European Corporate Governance Institute Working Paper No. 62/2004, April 2006.

[61] United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, art. 42.

[62] Mahnaz Malik, "The stakes of States in defending investment treaty arbitrations: a game of luck and chance?", International Institute for Sustainable Development, 2011, p. 3.

[63] International Centre for Settlement of Investment Disputes, Administrative and Financial Regulations, regulation 22, Publication.

[64] bid., Rules of procedure for arbitration proceedings, rule 37, Visits and inquiries; submissions of non-disputing parties; *Methanex Corporation v. United States of America*, 15 December 2001, para. 52; International Centre for Settlement of Investment Disputes, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, case No. ARB/05/22), procedural order 5.

[65] UNCITRAL Arbitration Rules, art. 28 (3). http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/pre-arb-rules-revised.pdf.

[66] Convention on the Settlement of Investment Disputes between States and Nationals of Other States, art. 53 (1).

68. Open arbitration conducted by unbiased arbitrators together with limited review will reduce the arbitrariness that has rendered proceedings illegitimate and awards suspect. States should also have the right to initiate disputes against investors that violate the right to health of individuals.

69. Arbitrators' discretion in allowing non-disputing parties to make submissions should be replaced by the right of affected communities to make written and oral submissions.

70. The Special Rapporteur is pleased to note that some States are already challenging the inequities of the current investor-State dispute settlement regime. For example, Ecuador amended its Constitution to prohibit entry into instruments that waive its sovereign jurisdiction in the arbitration of disputes with private individuals or corporations. Consequently, the country withdrew from the Convention on the Settlement of Disputes between States and Nationals of Other States, followed by the Plurinational State of Bolivia and the Bolivarian Republic of Venezuela.[67]

VI. Conclusion and recommendations

71. **There is a need to further clarify the issues of justiciability, progressive realization and enforcement of the right to health. This will help in highlighting the important role of the right to health in the individual's ability to live with dignity. It will also facilitate better planning and implementation of health-related policies. In the context of the current political and economic climate dominated by transnational corporations, steps should be taken to ensure that there are binding legal human rights obligations on transnational corporations towards individuals.**

72. **The Special Rapporteur recommends that States ensure the domestic justiciability of the right to health, including the obligations to respect, protect and fulfil the right to health of individuals.**

73. **To ensure effective enforcement of the right to health in domestic jurisdictions, the Special Rapporteur makes the following recommendations:**

(a) **Specific directions for implementing court judgements and orders that respect, protect and fulfil the right to health should be issued to the relevant authorities;**

(b) **States should ensure that court judgements on the right to health are fully implemented, in the same way as any other judicial order that promotes rights;**

(c) **Judgements and orders should be implemented with the participation of affected communities and other stakeholders;**

(d) **Systems of monitoring the implementation of health-related orders should be created, allowing for continuous oversight by adjudicatory bodies, community and civil society organizations and other stakeholders;**

(e) **Administrative remedies should allow for an adjudicator to review alleged violations of the right to health.**

[67] http://unctad.org/en/Docs/webdiaeia20106_en.pdf.

74. **The Special Rapporteur recommends that States ratify the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and to the Convention on the Rights of the Child on a communications procedure, thereby recognizing the competence of the respective committees to consider individual communications with a view to ensuring the availability of an international adjudicatory mechanism for individuals whose right to health has been violated. The Special Rapporteur further recommends that States recognize the competence of the Committee on Economic, Social and Cultural Rights to receive and consider inter-State communications.**

75. **With regard to the State's progressively realizable obligations under the right to health, the Special Rapporteur recommends that:**

(a) **The term "available resources" be clarified to guide States and assist adjudicators in determining whether the amount of available resources proffered by States is accurate;**

(b) **Available resources include the maximum amount of resources that can be allocated to a specific health goal without compromising other essential services;**

(c) **The amount of resources available to States be subject to scrutiny through a review of States' budgets and efforts to mobilize additional resources;**

(d) **To facilitate a full and fair review, States should make public, including to adjudicators, information regarding the calculation of their available resources, budgetary allocations and efforts to increase the available resources in an open and transparent manner;**

(e) **States' available resources be determined to be efficiently allocated by focusing on the reasonableness of the policymaking, with special attention paid to the effect on vulnerable groups, and the transparency and participatory nature of such process;**

(f) **States deliver benefits promised under health-care programmes with regard to health facilities, goods and services. Failure to deliver, or the diversion of funds, may be considered a violation of States' right-to-health obligations.**

76. **The Special Rapporteur recommends the adoption of an international treaty that will:**

(a) **Confer specific, binding human rights obligations, including the right to health, on transnational corporations;**

(b) **Prevent investors from encroaching on States' policymaking space;**

(c) **Provide for an accessible and effective adjudicatory forum where States and individuals can hold transnational corporations accountable for violations of the right to health.**

77. **The Special Rapporteur also recommends that, until an international treaty is formulated, States adopt a declaration on human rights obligations of transnational corporations.**

78. **The Special Rapporteur recommends that States review, renegotiate or enter into international investment agreements in an open and transparent manner, with the participation of affected communities and other stakeholders. International investment agreements should include provisions that:**

(a) **Confer human rights obligations on host and home States and investors;**

(b) **Allow host States to modify existing laws, or adopt new laws, to comply with their obligations under the right to health or in times of crisis affecting the entire State;**

(c) **Enable States to initiate disputes when investors do not comply with or violate the right to health.**

79. **The Special Rapporteur recommends that investor-State dispute settlement systems should be made transparent and be modified to:**

(a) **Ensure that arbitrators are unbiased;**

(b) **Establish a regionally representative, permanent panel of arbitrators;**

(c) **Require the details of a dispute to be published and continuously updated as soon as an investor issues the notice of intent;**

(d) **Ensure that non-parties to disputes have the right to attend arbitration proceedings;**

(e) **Ensure that those who are not party to the dispute, especially affected communities, have a right to make written and oral submissions;**

(f) **Allow arbitration to be conducted in host States to facilitate access to the arbitration by interested parties;**

(g) **Institute a system of review of arbitration awards to reduce arbitrariness.**

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Sixty-ninth session
Item 111 of the provisional agenda*
Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations

Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations

Note by the Secretary-General**

1. In accordance with the provisions of Article 12, paragraph 2, of the Charter of the United Nations and with the consent of the Security Council, the Secretary-General has the honour to notify the General Assembly of matters relative to the maintenance of international peace and security that are being dealt with by the Security Council.

2. The matters relative to the maintenance of international peace and security of which the Security Council is seized are set out below. Items with which the Council has ceased to deal since the notification to the General Assembly at its sixty-eighth session (A/68/300) have been deleted. Those deletions, made pursuant to the note by the President of the Security Council dated 26 July 2010 (S/2010/507), are recorded in document S/2014/10/Add.9.

1. The Palestine question.
2. The India-Pakistan question.
3. The Hyderabad question.
4. Letter dated 20 February 1958 from the representative of the Sudan addressed to the Secretary-General.
5. Letter dated 11 July 1960 from the Minister for Foreign Affairs of Cuba addressed to the President of the Security Council.
6. The situation in the Middle East.
7. Letter dated 31 December 1960 from the Minister for External Affairs of Cuba addressed to the President of the Security Council.
8. The situation in Cyprus.

* A/69/150.
** The present notification relates to the period from 1 September 2013 to 31 August 2014.

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9. The situation in the India/Pakistan subcontinent.

10. Letter dated 3 December 1971 from the Permanent Representatives of Algeria, Iraq, the Libyan Arab Republic and the People's Democratic Republic of Yemen to the United Nations addressed to the President of the Security Council.

11. Complaint by Cuba.

12. Arrangements for the proposed Peace Conference on the Middle East.

13. The situation concerning Western Sahara.

14. The situation in Timor-Leste.

15. The Middle East problem, including the Palestinian question.

16. The situation in the occupied Arab territories.

17. The question of the exercise by the Palestinian people of its inalienable rights.

18. The situation between Iran and Iraq.

19. Letter dated 1 October 1985 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council.

20. Letter dated 4 February 1986 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council.

21. Letter dated 15 April 1986 from the Chargé d'affaires a.i. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council;

    Letter dated 15 April 1986 from the Chargé d'affaires a.i. of the Permanent Mission of Burkina Faso to the United Nations addressed to the President of the Security Council;

    Letter dated 15 April 1986 from the Chargé d'affaires a.i. of the Permanent Mission of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council;

    Letter dated 15 April 1986 from the Permanent Representative of Oman to the United Nations addressed to the President of the Security Council.

22. Letter dated 19 April 1988 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council.

23. Letter dated 2 February 1990 from the Permanent Representative of Cuba to the United Nations addressed to the President of the Security Council.

24. United Nations peacekeeping operations.

25. The situation between Iraq and Kuwait.

26. The situation in Liberia.

27. The situation in Somalia.

28. The situation in Bosnia and Herzegovina.

29. The situation in Georgia.

30. The question concerning Haiti.

31. The situation in Burundi.

32. The situation in Afghanistan.

33. The situation in Sierra Leone.

34. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

35. International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994.

36. The situation in the Great Lakes region.

37. The situation concerning the Democratic Republic of the Congo.

38. The situation in the Central African Republic.

39. Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999).

40. Children and armed conflict.

41. The situation in Guinea-Bissau.

42. Protection of civilians in armed conflict.

43. Small arms.

44. General issues relating to sanctions.

45. The situation in the Middle East, including the Palestinian question.

46. Women and peace and security.

47. Briefing by the President of the International Court of Justice.

48. Briefing by the United Nations High Commissioner for Refugees.

49. Briefing by the Chairperson-in-Office of the Organization for Security and Cooperation in Europe.

50. Meeting of the Security Council with the troop- and police-contributing countries pursuant to resolution 1353 (2001), annex II, sections A and B.

51. Threats to international peace and security caused by terrorist acts.

52. Briefings by Chairmen of subsidiary bodies of the Security Council.

53. The situation in Côte d'Ivoire.

54. Security Council mission.

55. The promotion and strengthening of the rule of law in the maintenance of international peace and security.

56. Letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (S/2003/939);

    Letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/2003/943).

57. Central African region.

58. Non-proliferation of weapons of mass destruction.

59. Reports of the Secretary-General on the Sudan and South Sudan.[1]

60. Post-conflict peacebuilding.

61. The situation concerning Iraq.

62. Threats to international peace and security.

63. Non-proliferation.

64. Peace consolidation in West Africa.

65. The situation in Myanmar.

66. Non-proliferation/Democratic People's Republic of Korea.

67. Letter dated 22 November 2006 from the Secretary-General addressed to the President of the Security Council (S/2006/920).

68. Maintenance of international peace and security.

69. Peace and security in Africa.

70. Cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security.

71. Letter dated 6 February 2011 from the Permanent Representative of Cambodia to the United Nations addressed to the President of the Security Council (S/2011/58).

72. The situation in Libya.

73. The situation in Mali.

74. Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2014/136).

75. Letter dated 13 April 2014 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council (S/2014/264).

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[1] Pursuant to the note by the President of the Security Council dated 11 November 2013 (S/2013/657), as from that date, the wording of the item "Reports of the Secretary-General on the Sudan" was revised to read "Reports of the Secretary-General on the Sudan and South Sudan".

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General Assembly

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Sixty-ninth session
Item 69 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, submitted in accordance with Human Rights Council resolution 5/1.

* A/69/150.

14-59010 (E) 270814

Please recycle

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, submits his first report to the General Assembly. This short technical report is based on consultations held with the relevant States and other stakeholders in Geneva in June 2014 and outlines next steps towards the fulfilment of the mandates contained in Commission on Human Rights resolution 1993/2 and Human Rights Council resolution 5/1.

I. Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, was appointed on 8 May 2014, in accordance with Commission on Human Rights resolution 1993/2 and Human Rights Council resolution 5/1. He assumed his functions on 2 June 2014. He is the sixth Special Rapporteur to assume this mandate.

2. This short technical report is based on consultations held with the relevant States and other stakeholders in Geneva in June 2014. The Special Rapporteur intends to conduct a mission to Israel and the Occupied Palestinian Territory at the earliest possible opportunity with a view to preparing his first substantive report, to be submitted to the Human Rights Council at its twenty-eighth session, in March 2015.

II. Mandate

3. The mandate of the Special Rapporteur is outlined in Commission on Human Rights resolution 1993/2 and was renewed by Human Rights Council resolution 5/1.

4. Specifically, the Special Rapporteur is mandated to carry out the following activities:

(a) To investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;

(b) To receive communications, to hear witnesses and to use such modalities of procedure as he may deem necessary for his mandate;

(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories.

5. The mandate of the Human Rights Council[1] is therefore clearly to investigate and report on violations of international humanitarian law and international human rights law allegedly committed by Israel, the occupying Power, in the context of its prolonged occupation of the Palestinian territories since 1967.

III. Cooperation

6. Israel has in the past extended full cooperation with the mandate holder. In 1993, the Special Rapporteur received an invitation from the then Minister for Foreign Affairs, Shimon Peres, to visit Israel and the Occupied Palestinian Territory in 1994, as a result of which he carried out two visits during his term. On both occasions, he held meetings with Israeli and Palestinian officials, representatives of non-governmental organizations and of United Nations entities in the Occupied

[1] Pursuant to General Assembly resolution 60/251, the Human Rights Council has assumed the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights.

Palestinian Territory, as well as with victims and witnesses of alleged violations of human rights. He was granted complete freedom of movement during his missions, including access to an Israeli detention facility for the purpose of conducting unsupervised interviews with Palestinian detainees (see E/CN.4/1994/14 and E/CN.4/1995/19).

7. Cooperation between Israel and subsequent mandate holders then ceased owing to the country's reservations concerning the mandate, although it continued to permit the Special Rapporteurs (with the exception of the fifth Special Rapporteur) to gain access to Israel and the Occupied Palestinian Territory.[2] This lack of cooperation has been regrettable, given that the full cooperation and engagement of the Government of Israel would positively contribute to the effective, even-handed and impartial implementation of the mandate. The Palestinian authorities have consistently extended their full cooperation to the current mandate holder.

8. As a former journalist and diplomat, the Special Rapporteur recognizes that any narrative is composed of two elements: fact and interpretation. Information contained in second-hand or third-hand reports will necessarily be subject to interpretation and be influenced by the standpoint of the individual or organization, and it can never replace the testimonies and the information gathered from face-to-face meetings with individuals, civil society representatives and government representatives in the Occupied Palestinian Territory and Israel.

9. The credibility of the Special Rapporteur's reports to the Human Rights Council and the General Assembly would also be enhanced by the ability of the mandate holder to duly and objectively reflect the official viewpoints and perspectives on the situation of human rights in the Palestinian territories occupied since 1967. The Special Rapporteur therefore considers meetings with official Israeli and Palestinian interlocutors to be an important element of any country visit.

10. The Special Rapporteur will formally request the Governments of Israel and of the State of Palestine to facilitate a visit to Israel and the Occupied Palestinian Territory before the end of 2014 with a view to preparing his first substantive report, to be submitted to the Human Rights Council at its twenty-eighth session, in March 2015.

11. It is hoped that Israel will, in good faith, extend the same level of cooperation to the current Special Rapporteur as it did to the first and, more recently, to the Special Rapporteur on adequate housing in 2012 and to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in 2011, in the context of their respective visits to Israel and the Occupied Palestinian Territory (see A/HRC/22/46/Add.1, A/HRC/20/17/Add.2, E/CN.4/1994/14 and E/CN.4/1995/19). The Special Rapporteur counts on the facilitation of the Governments of Israel and the State of Palestine in this regard.

12. The Special Rapporteur also looks forward to receiving constructive responses from the Government of Israel to the conclusions and recommendations of his substantive reports to be submitted to the Human Rights Council and the General Assembly during the course of his term as mandate holder.

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[2] Israel deported the Special Rapporteur serving from 2008 to 2014 upon his arrival at Ben Gurion airport in December 2008, as he attempted to enter Israel on mission, and refused to engage in any contact with him thereafter (see A/HRC/25/67).

IV. Consultations in Geneva

13. From 23 to 27 June 2014, the Special Rapporteur undertook a mission to Geneva for consultations with the States concerned. The primary purpose of the visit was to establish contacts and to discuss the implementation of the mandate with the Permanent Representative of Israel and the Permanent Observer of the State of Palestine to the United Nations Office at Geneva.

14. The Special Rapporteur met the Permanent Observer of the State of Palestine and the Permanent Representative of Israel on 24 and 26 June respectively, and held open and frank discussions with both of them in a spirit of transparency and mutual trust. The meeting with the Permanent Representative of Israel was particularly noteworthy because the Government of Israel had previously ceased all contact with the Special Rapporteur's predecessor for six years. The Permanent Representative of Israel informed the Special Rapporteur of his country's reservations regarding both the one-sided wording and open-ended nature of the mandate, which according to Israel prescribed the violations to be investigated by the Special Rapporteur. The Permanent Observer of the State of Palestine expressed his full support for the Special Rapporteur in the fulfilment of his mandate.

15. The Special Rapporteur also met other relevant interlocutors, including the President of the Human Rights Council, the Deputy United Nations High Commissioner for Human Rights, other staff members of the Office of the United Nations High Commissioner for Human Rights and representatives of non-governmental organizations, in order to apprise himself of the situation in the Occupied Palestinian Territory and to seek advice in relation to the effective fulfilment of the mandate. He also attended a discussion held under item 7 of the agenda of the twenty-sixth session of the Human Rights Council, entitled "Human rights situation in Palestine and other occupied Arab territories", to observe the proceedings.

16. During the aforementioned meetings, the Special Rapporteur expressed a desire to engage in constructive dialogue and the intention to begin working through the established human rights mechanisms available to special procedures mandate holders, including by way of confidential communications, in order to raise awareness of issues of concern pertaining to the situation of human rights in the Occupied Palestinian Territory. The Special Rapporteur reiterated that his only interest was to offer an objective assessment of the situation of human rights in the Occupied Palestinian Territory and to make recommendations with a view to improving the situation of human rights for Palestinians presently living under continued Israeli military occupation. The Special Rapporteur noted that access to Israel and the Occupied Palestinian Territory was an important starting point and expressed a strong interest in undertaking a country visit at the earliest opportunity.

17. A number of interlocutors informed the Special Rapporteur, during his consultations in Geneva, that Israel had conveyed assurances of its cooperation and engagement, including in terms of granting access to the mandate holder for a country visit.

V. Implementation and next steps

18. The intention of the Special Rapporteur in the present report is to provide an overview of the mandate, to address the issue of cooperation and to report briefly on the consultations with relevant stakeholders held in Geneva in June 2014. More time is needed to reflect upon the issues at hand and to gather adequate and credible first-hand information by way of a country visit before embarking on a substantive report.

19. Nevertheless, the Special Rapporteur is gravely concerned at the unfolding tragedy in the Gaza Strip. Since Israel launched military operation "Protective edge" during the night of 7 July 2014, the reported number of Palestinian civilians, including children, killed in the Gaza Strip as a result of Israeli airstrikes, tank and naval shelling on homes, hospitals and schools, including those run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and other civilian infrastructure has climbed rapidly with each passing day.[3] The death toll has risen further since the ground offensive, which began on 17 July.

20. The destruction of several thousands of homes has affected families throughout Gaza.[3] Hundreds of thousands of people have had to leave their homes to seek refuge in schools, government buildings, hospitals and the homes of relatives. The number of internally displaced persons hosted by UNRWA is reported to have already exceeded the equivalent figure during Israeli military operation "Cast lead" (27 December 2008-18 January 2009), which represented the deadliest escalation of violence recorded in Gaza since 1967. The gravity of the situation in the Gaza Strip is compounded by a shortage of fuel, electricity, water, medical supplies and other basic necessities for the civilian population.

21. The Special Rapporteur has received dozens of reports of alleged violations of international human rights law and international humanitarian law by Israel, based on the monitoring and documentation work of courageous human rights defenders in Gaza, who are working tirelessly and at great risk to their own safety to bring these terrible cases to the attention of the world.

22. In the light of the gravity of the situation, the Special Rapporteur undertook an exceptional mission to Geneva on 23 July to attend the twenty-first special session of the Human Rights Council on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem. At the session he delivered a statement on behalf of the Coordination Committee of Special Procedures during which he urged that prompt, thorough, independent and effective investigations be conducted into all civilian deaths and injuries, as well as into the destruction of all civilian homes and vital infrastructure, caused by the Israeli military operation in Gaza, as well as by the rockets fired by Palestinian armed groups into Israel.

23. The Special Rapporteur has no illusions about the challenges ahead in the implementation of his mandate. Nevertheless, he will do his utmost to investigate and report on alleged Israeli violations impartially and objectively, with no

[3] Office for the Coordination of Humanitarian Assistance, situation report on the Occupied Palestinian Territory of 7 August 2014. Available from www.ochaopt.org/documents/ocha_opt_sitrep_07_08_2014_.pdf.

preconceptions, on the basis of facts set against established international human rights law and international humanitarian law.

24. In future reports, the Special Rapporteur will present conclusions and recommendations that may shed light on alleged human rights violations suffered by victims in the Occupied Palestinian Territory. He hopes that his future reports will contribute to bringing some form of accountability for such violations and, ultimately, to preventing their reoccurrence. He is firmly of the view that lasting peace can be built only on the foundations of human rights and human dignity.

25. The Special Rapporteur takes note of Human Rights Council resolution S-21/1, adopted on 23 July 2014, and looks forward to unhindered access to Israel and the Occupied Palestinian Territory and to full cooperation with the respective authorities in the context of the implementation of his mandate.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights of migrants

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, François Crépeau, submitted in accordance with Assembly resolution 68/179.

* A/69/150.

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Report of the Special Rapporteur on the human rights of migrants

Summary

In the present report, submitted in accordance with General Assembly resolution 68/179, the Special Rapporteur first introduces his activities during the reporting period.

The thematic section is dedicated to advocating the inclusion of the human rights of migrants in the post-2015 development agenda and contains an analysis of current migration trends. The Special Rapporteur provides guidelines, conclusions and recommendations on how to mainstream the human rights of migrants within key sustainable development goals, targets and indicators, in addition to recommendations on how to better monitor and gather data from marginalized groups such as migrants.

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the human rights of migrants, François Crépeau, pursuant to resolution 68/179.

II. Activities

2. During the period under review, the Special Rapporteur participated in a number of conferences and events relating to his mandate, including the High-level Dialogue on International Migration and Development, which was held in New York in October 2013.

3. The Special Rapporteur attended an expert meeting on human rights at international borders, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva in November 2013.

4. In February 2014, he participated in the twelfth coordination meeting on international migration, held in New York.

5. In March, the Special Rapporteur was the keynote speaker at the annual high-level panel discussion of the Human Rights Council on human rights mainstreaming, which focused on the protection and promotion of the human rights of migrants.

6. In April, the Special Rapporteur attended the day of general discussion organized by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, focusing on workplace exploitation and protection. He also attended a meeting on human rights indicators for migrants, organized by OHCHR in Geneva.

7. The Special Rapporteur attended the Global Forum on Migration and Development, held in Stockholm in May. He also undertook a country visit to Sri Lanka, the report on which will be submitted to the Human Rights Council in 2015.

8. In June 2014, he presented his third annual report to the Human Rights Council (A/HRC/26/35), focusing on labour exploitation of migrants. He also submitted a report on his visit to Qatar (A/HRC/26/35/Add.1), which he conducted in November 2013.

III. Human rights of migrants in the post-2015 development agenda

A. Achievements and constraints of the Millennium Development Goals

9. In 2000, States adopted the United Nations Millennium Declaration, thereby committing themselves to a new global partnership to reduce extreme poverty, which led to a series of time-bound targets known as the Millennium Development Goals. The Goals provided clear direction for Governments and international actors to focus and work together on achieving specific development issues. The Goal framework supported the development of national statistical capacity and improved

statistical system coordination at the national and international levels.[1] This resulted in effective generation and collection of data for the Goals, which in turn influenced and shaped national and international policies on human development. The Goals stimulated global and national development efforts, notably towards eradicating poverty and improving access to primary education.

10. In the United Nations Millennium Declaration, Governments pledged to strive for the protection and promotion of all human rights, but the Goal framework failed to live up to that pledge. This state of affairs has demonstrated that issues left out of a universally agreed agenda are not effectively monitored and reported on and are easily overlooked when priorities are set, policies defined or budgets allocated. The Goals have been viewed by some as an economic growth agenda, not explicitly aligned with human rights. Yet, human rights are essential for sustainable development: Governments' legal obligations regarding international human rights standards must be reflected in current development policy in order to enhance effectiveness and accountability. By delinking the Goals from human rights, State obligations were reduced to mere policy options, for example on the issue of free primary education. In addition, given that international human rights standards did not form the basis on which the Goals were developed, the targets created were sometimes unambitious or inadequate.[1] Research shows that the Goals were also often seen as donor driven because organizations based in the North focused more on the goals than on human rights, whereas those based in the South engaged more on human rights and hardly on the Goals.[2]

11. Although equality was one of the core values of the United Nations Millennium Declaration, the Goals did not adequately tackle issues of discrimination, equality and equity, resulting in increases in inequalities within and between countries.[3] The Goals placed emphasis on overall progress as the main indicator, thereby overlooking slower progress or the growing exclusion of marginalized groups, including migrants living and working in precarious circumstances.

12. The Goals encouraged technical fixes and focused on the low-hanging fruit, rather than targeting the root causes of development problems. Consequently, they monitored progress and success through a one-size-fits-all lens, focusing only on what was easily measurable and not on what was important, such as the empowerment of marginalized groups. The lack of proper monitoring meant that it was difficult to hold Governments accountable at the global, national and local levels.

13. In addition, the targets did not sufficiently address inequalities, which made it possible to achieve them without properly addressing marginalized groups. Instead of being transformative, the Goals were technocratic.[4]

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[1] United Nations system task team on the post-2015 United Nations development agenda, "Realizing the future we want for all" (New York, 2012). Available from www.un.org/millenniumgoals/pdf/Post_2015_UNTTreport.pdf.

[2] Paul J. Nelson, "Human rights, the Millennium Development Goals, and the future of development cooperation", *World Development*, vol. 35, No. 12 (December 2007), pp. 2041-2055.

[3] Open letter by the United Nations High Commissioner for Human Rights, dated 6 June 2013, available from www.ohchr.org/Documents/Issues/MDGs/OpenLetterMS_Post2015.pdf.

[4] OHCHR, *Human Rights and the Millennium Development Goals in Practice: A Review of Country Strategies and Reporting* (HR/PUB/10/1).

14. Other challenges that the Goal framework did not adequately address included tackling climate change, natural disasters and external shocks such as the global financial climate, social exclusion, addressing demographic dynamics, ensuring peace and security and improving governance and the rule of law.

B. Current migration trends

15. There are currently more than 232 million migrants. Most originate from developing countries, with 59 per cent settling in developed regions where they make up some 11 per cent of the population. Currently, however, there is a rise in South-South migration, in particular in Asia, which has witnessed an increase of 41 per cent. Consequently, Asia is on track to overtake Europe as the major area hosting the largest number of migrants in the near future.[5]

16. Many are still migrating to find decent work and a better or safer life. Some migrants voluntarily move, live and work in conditions in which their labour and human rights are respected or their family might be reunified. Others, however, are forced to migrate as a result of poverty, discrimination, violence, conflict, political upheaval or poor governance. In the context of natural disasters, migration is increasingly seen as an adaptation measure that develops resilience through planned mobility. During migration, many face exploitation, abuse and other human rights violations.

17. Large-scale migration is inevitable and necessary for the growth and development of a globalized economy that demands global production and a global workforce. Businesses and employers are keen to reduce costs and maximize profits. This frequently comes at a human cost, especially for migrants in an irregular situation who are often constrained by circumstances to perform tasks at whatever financial, physical or even psychological cost (see A/HRC/26/35). States are, in turn, ineffective when it comes to monitoring and sanctioning businesses that exploit migrants for their cheap labour, often in dirty, difficult and dangerous working conditions. In some sectors, such as agriculture, construction, extraction or hospitality, many workers are migrants in an irregular situation. States are often engaged in migration governance discussions and know that some sectors of their economies rely on the exploitation of migrants in an irregular situation who will not complain owing to their residency status, lack of political capital and/or lack of access to justice.

18. In addition, ageing populations have caused a shift in demographics that has led to labour shortages in Italy and Japan, among others. In 2010, for the first time, more workers were retiring from the European labour market than joining it. By 2030, the labour shortage in Europe is likely to rise to 8.3 million workers. By 2020, other large economies, such as Canada, China, the Republic of Korea and the Russian Federation, will also face similar shortages.[6] To overcome this challenge, employers will have to embrace diversity and rely on recruitment from a global labour force. Migrants of all skill levels will be required for many sectors of the economy.

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[5] United Nations, *International Migration Report 2013* (ST/ESA/SER.A/346).

[6] Ernst and Young, "Tracking global trends: how six key developments are shaping the business world" (2011). Available from www.ey.com/Publication/vwLUAssets/Tracking_global_trends/$FILE/Tracking%20global%20trends.pdf.

19. The economic and financial crisis has also increased migration from the most affected countries. From 2007 to 2011, the migration of citizens from Greece and Spain to Organization for Economic Cooperation and Development destination countries more than doubled, while the number of citizens leaving Ireland increased by 80 per cent.[7]

20. Increased migration has led to a rise in anti-migration sentiment, which has resulted in greater discrimination and violence against migrants, given that they are portrayed as taking away jobs and draining social services in the host country. Immigration has, however, been found to have a minimal impact on unemployment of residents and a positive overall impact on employment generation and investment.[7] Currently, 74 per cent of migrants are of working age and the numbers are almost evenly spread out between genders.[5] Policies that favour diversity and the inclusion of migrants are key to facilitating their contribution to development and reducing populist negative representations of migrants.

C. Why the human rights of migrants should be included in the post-2015 sustainable development agenda

21. Human rights are not reserved for citizens. They benefit everyone within a State's territory or jurisdiction, without discrimination, irrespective of administrative status and circumstances.

22. Governments have already committed themselves to upholding human rights in numerous international treaties: they must implement such commitments in the setting of development priorities. How migration is governed — whether rights to move, live, work and seek redress are promoted, respected and protected — will contribute to determining the kind of development outcomes that can be achieved.

23. Human rights standards and principles provide specific guidance as to how goals, targets and indicators should be framed in the post-2015 United Nations development agenda. Since the participants in the United Nations Conference on Sustainable Development proposed the inclusion of human rights in the sustainable development goals, support for the inclusion of human rights has also been reiterated by the United Nations system task team on the post-2015 agenda, the Secretary-General (see A/68/292), stakeholders around the world in global thematic consultations sponsored by the United Nations, the High-level Panel of Eminent Persons on the Post-2015 Development Agenda and the Open Working Group of the General Assembly on Sustainable Development Goals. The content of the present report — in particular the goals, targets and indicators — is drawn from those sources and from OHCHR and the Global Migration Group.

24. The United Nations High Commissioner for Human Rights has called for the inclusion of marginalized groups, including migrants, in the post-2015 agenda, saying that such inclusion is: "a normative obligation rooted in the prohibition of discrimination, but also a practical imperative for effective development strategies. It should by now be seen as axiomatic that no society can develop to its true potential when entire sectors of that society are blocked from contributing by legal,

[7] Organization for Economic Cooperation and Development, *International Migration Outlook 2013* (Paris, OECD Publishing, 2013).

physical, social or political barriers. Development — real development — is about removing barriers and expanding choices."[3]

25. It is internationally recognized that migrants are drivers and enablers of development.[8] Migrants contributed to efforts to attain the Millennium Development Goals by, among other things, boosting household income, resulting in improved health and greater school enrolment. At the national level, remittances to developing countries account for a significant proportion of the gross domestic product and are an important source of foreign currency earnings, supporting national income and allowing countries to pay for critical imports, gain access to capital markets and pay lower interest rates on sovereign debt.[9] Migrants increase domestic demand for goods and services, which in turn increases total economic output, thereby creating jobs in the country of destination. At the regional and global levels, migration addresses global talent and labour shortages.

26. In 2013, migrants sent approximately $404 billion in remittances.[10] Migrants who moved from countries with a low human development index to countries with a higher index experienced, on average, a 15-fold increase in income, a doubling in education enrolment rates and a 16-fold reduction in child mortality.[11] If the human rights of migrants are effectively promoted, respected and protected within well-governed migration processes, such development outcomes can be greatly enhanced.

27. The Special Rapporteur would like to strongly emphasize, however, that migration is first and foremost about human beings who are rights holders exercising their personal freedom to move and whose dignity can be defined by how much they are allowed to exercise options in defining their own future and that of their family, without being only constrained by status and circumstances. It is therefore crucial to facilitate mobility while effectively promoting and protecting the human rights of migrants within well-governed migration processes. Development is no longer defined only from an economic lens, given that sustainable development includes economic, environmental and social dimensions. All subjects of development, including migrants, should equally enjoy their human rights. Unfortunately, the reality is that many migrants continue to live and work in precarious and inequitable conditions.

28. Development targets that pay no attention to which groups are being left behind can be met without having any real impact on ensuring a more equal and just world. The focus should not be on simply reducing the cost and increasing the flow of remittances, but rather on the human cost of migration. In many countries, the most marginalized and exploited migrants are those who are in an irregular situation, have a precarious labour contract, are low-skilled, are children or adolescents, are women, in particular in domestic work, or are working in the construction, hospitality, extraction, fishing and agricultural sectors. Such migrants

[8] See www.iom.int/files/live/sites/iom/files/What-We-Do/docs/Dhaka-Declaration.pdf.

[9] United Nations Conference on Trade and Development, *Maximizing the Development Impact of Remittances* (UNCTAD/DITC/TNCD/2011/8).

[10] World Bank, "Migration and remittances: recent developments and outlook", *Migration and Development Brief*, No. 22, 11 April 2014. Available from http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief22.pdf.

[11] United Nations Development Programme, *Human Development Report 2009: Overcoming Barriers — Human Mobility and Development* (United Nations publication, Sales No. E.09.III.B.1).

experience multiple forms of discrimination, on the basis of nationality, legal status, sector of work, sex, age and ethnic, linguistic or religious identity.

29. National development plans must acknowledge the positive role that migration plays in development and spur migration policies that go beyond implementing security controls and curbing irregular migration. National plans must recognize the development potential of migration and build coherent labour migration and employment policies that match supply and demand for highly skilled and low-skilled workers. In particular, the plans must acknowledge the real needs for low-skilled labour and broaden opportunities for temporary and permanent migration for such workers, in addition to implementing sanctions against employers who exploit migrants, irrespective of their status and circumstances.

30. Moreover, the post-2015 agenda must recognize that migration interacts with development in important areas beyond the workplace, including in the communities that migrants leave or join, health, education and cultural life. Thus, the participants in the United Nations Conference on Sustainable Development recognized that sustainable development required the meaningful involvement and active participation of all affected, including migrants. As noted in the outcome document (General Assembly resolution 66/288, annex), their rights need to be effectively promoted, respected and protected, regardless of migration status, especially the rights of women and children. States need to address international migration through international, regional or bilateral cooperation and dialogue. They should strive for a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability. In the Declaration of the High-level Dialogue on International Migration and Development (General Assembly resolution 68/4), the participants recognized the important contribution that migrants were making towards sustainable development and supported the call to adequately consider the inclusion of migrants in the sustainable development goals.

31. The Open Working Group of the General Assembly on Sustainable Development Goals has discussed the need to include migrants as a cross-cutting issue and have disaggregated data on migrants. The Special Rapporteur supports the continuing discussion on migrants, which comes under the concept of "no one is left behind".

D. Mainstreaming migration in the sustainable development goals

32. The Special Rapporteur recommends that the elements set out below be considered in the post-2015 agenda.

1. General overview

33. The language used to develop the targets should be sensitive to and inclusive of migration, focusing not only on citizens but also on migrants, thereby recognizing their human rights, contribution to development and need to be explicitly recognized as legal persons and as drivers of development, with a particular focus on marginalized migrant individuals and groups.

34. The Special Rapporteur supports universal goals that are applicable to all States and are inclusive of marginalized groups, including migrants. Mainstreaming migration would entail including targets and indicators on the human rights of migrants under each goal.

2. Narrative

35. The narrative should recognize the significant role that the millions of migrants play as enablers and subjects of development, whose human rights should be respected, protected and fulfilled. It should acknowledge how migration affects the realization of a number of development goals at the national, regional and global levels and also how migrants are affected by them and thus needs to be taken into account when formulating development strategies at all levels.

36. In the following section, the Special Rapporteur sets out the need to have migration mainstreamed under each of the goals outlined below.

3. Goal on equality

37. The Millennium Development Goals failed to address the issue of inequality and the plight of the most disadvantaged members of society, which resulted in some Governments concentrating their interventions on the groups easiest to reach, rather than on those most marginalized.[12]

38. The rising inequality in many developed and developing countries has a detrimental effect on social cohesion and economic growth. The synthesis report of the global thematic consultation on the post-2015 development agenda, focusing on inequalities, states that:

> There is considerable evidence that inequalities in one structural domain increase the likelihood of inequalities in others. In the event of opportunity for improvements in one domain, the chance of progress is often undermined or rendered inaccessible by simultaneous intersecting disadvantage in another ... These intersecting and mutually reinforcing inequalities are often rooted in historical relationships, and continue to be reproduced through discrimination in social, economic, environmental and political domains.[13]

39. A human-rights-based approach to setting goals makes it essential to tackle inequalities when formulating development priorities. Article 1 of the Universal Declaration of Human Rights affirms that "all human beings are born free and equal in dignity and rights". All persons are entitled to the enjoyment of all rights, on an equal footing and without discrimination on any grounds, including race, ethnicity, sex, gender, disability, socioeconomic status, age or nationality. Moreover, under international human rights treaties, States have committed themselves to taking measures to ensure the implementation of civil, political, economic, social and cultural rights to the maximum extent of their available resources. The Committee on Economic, Social and Cultural Rights, in its general comment No. 20, states that the lack of available resources cannot be considered to be an objective and

[12] United Nations system task team on the post-2015 United Nations development agenda, "Addressing inequalities: the heart of the post-2015 agenda and the future we want for all" (New York, 2012). Available from www.un.org/millenniumgoals/pdf/Think%20Pieces/10_inequalities.pdf.

[13] See www.worldwewant2015.org/node/299198.

reasonable justification for a difference of treatment, "unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority". International human rights law includes several widely agreed commitments to equality and a set of tools and mechanisms by which to achieve it, including the requirement that duty bearers address the root causes of inequality and discrimination.

40. There is now growing consensus among States that the post-2015 agenda must include tackling the reduction of inequalities. The new development framework must be articulated in a manner that not only does not accept or accommodate inequalities and disparities, but also actively seeks to tackle them. Equality, however, does not mean treating all cases in the same way, given that doing so would reduce it to formal equality. Substantial equality means treating differently persons who are in a different situation. It refers to bringing all persons to a level playing field and progressively working to improve the quality and levels of service accessible to marginalized groups that are usually left behind, including migrants.

41. The Special Rapporteur strongly recommends that the post-2015 agenda incorporate equality, which in itself is a fundamental human rights principle, as a stand-alone and cross-cutting goal, aiming to progressively eliminate disparities within and between marginalized groups, including migrants, and the general population, as well as between countries, to achieve more inclusive forms of development.

42. Incorporating the equality principle will create incentives to end discrimination and adopt affirmative-action measures or temporary special measures where barriers exist and persist. In addition, it will require States to look beyond average attainments and adopt more effective ways of collecting disaggregated data on inequality affecting marginalized groups, in order to allow for disparate impacts to be identified. Specific measurements will be required to assess the extent to which migrants benefit from the post-2015 framework.

43. A goal on equality should be broad, not only focusing on income disparities, but also identifying key dimensions of economic and social inequality, including in terms of participation and access to essential services such as health, education and social protection. This should be framed with reference to the civil, political, economic, social and cultural rights of all. In addition, targets and indicators relating to employment and fiscal or redistributive policies must be included under this goal and structural determinants of inequality should also be addressed.

44. Equality should be cross-cutting. All new targets must mainstream equality and explicitly focus on reducing inequalities, in order to measure and tackle unequal enjoyment of the opportunities and benefits of progress across different areas. Targets and indicators must focus on the situation of the most marginalized, whose rights and needs should be considered and accorded priority. As such, success should be measured by the progress made by all, including the most marginalized groups, including migrants, rather than only by overall progress.

Targets and indicators

45. Targets under equality should focus on the empowerment and inclusion of groups that are often marginalized, including migrants, and include a commitment to

working towards more inclusive societies that respect and promote social and cultural diversity. Such targets should focus on:

(a) Monitoring and ending inequalities and discrimination against migrants, irrespective of their status, in laws, policies and practices;

(b) Ensuring that migrants are protected against racism, racial discrimination, xenophobia and related intolerance and have access to means of recourse and redress;

(c) Ensuring the effective protection of the human and labour rights of migrants, including equal opportunity and treatment in employment, in compliance with international human rights and labour standards.

46. To ensure equality of economic opportunities for all, including marginalized groups, including migrants, targets should be developed on the following specific issues:

(a) Adopting approaches that reduce the precariousness of migrants, in particular by avoiding the securitization of migration policies and the externalization of border controls;

(b) Implementing policies that effectively sanction employers who exploit migrants and increasing the share of migrants who benefit from cross-border recognition of skills and qualifications and of portability of social security benefits;

(c) Ensuring development opportunities for all, including secure rights to own land, property and other productive resources and to access to financial services.

47. Indicators under this goal could include:

(a) Proportion of migrant children and children of migrants under 5 years of age whose birth is registered with a competent civil authority;

(b) Establishing a policy-specific time frame for the elimination of discrimination against all migrants in laws, policies and practices;

(c) Proportion of migrants with affordable and effective access to justice through independent and competent judicial and quasi-judicial institutions, such as the court system, administrative tribunals, national human rights institutions and other bodies whose decisions may affect their rights;

(d) Proportion of migrants excluded from adequate, affordable and accessible public services;[14]

(e) Proportion of migrants able to gain access to financial services, including opening bank accounts and securing mortgages.

48. Inequalities cannot be properly tackled without better and more accurate data collection, which is essential to identifying and monitoring inequalities.

[14] See resolutions 68/179, para. 3 (a), resolution 66/288, annex, para. 43, and resolution 68/4, para. 1. See also the Global Migration Group position document on including migrants in the post-2015 United Nations development agenda, available from www.globalmigrationgroup.org/sites/default/files/uploads/GMG-Working-Groups-and-Task-Forces/Working-Group-on-Human-Rights-Gender-and-Migration/GMG-WG-HR-position-document.pdf.

4. End poverty in all its forms everywhere

49. Migrants make a substantial contribution to reducing poverty. As stated above, migrants from countries with a low human development index who move to a country with a higher index experience, on average, a 15-fold increase in income. To eradicate poverty fully, all marginalized groups, including migrants, must be included in national poverty reduction strategies.

Targets and indicators

50. This goal should include specific targets on eradicating extreme poverty by bringing to zero the number of persons, including marginalized groups, including migrants, living on less than $1.25 per day and by addressing inequalities at both the national and international levels. Indicators will include reducing the proportion of migrants classified as living in poverty.

51. A target on providing social protection to reduce the vulnerabilities of the poor, including marginalized groups, including migrants, is essential. Indicators could include the proportion of migrants with access to, and cross-border portability of, earned social benefits (e.g. pensions). Under article 9 of the International Covenant on Economic, Social and Cultural Rights, States recognize the right of everyone to social security. In its general comment No. 19, the Committee on Economic, Social and Cultural Rights defined the right to social security as encompassing "the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents". It went on to say that "the right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies".

52. A human rights approach to social protection requires comprehensive, universal and sustainable systems with both contributory and non-contributory elements. Owing to their specific demographics, migrants usually contribute more in taxes and social contributions than they receive in individual benefits.[15] Although, as a result of their low wages, migrants contribute less in taxes than citizens, they usually also claim fewer benefits.[7] Migrants who do not participate directly in social contribution schemes also contribute to financing social protection schemes and programmes by paying indirect taxes (see CMW/C/GC/2). The right to social protection is absolute and not dependent on employment status. States should pursue publicly funded and delivered social protection policies in critical areas that guarantee the well-being of the entire community, including migrants, irrespective of their status.

53. Indicators should focus on the increased proportion of migrants with equal access to social security and cross-border portability of earned social security benefits such as pensions.[5]

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[15] International Labour Organization, *Fair Migration: Setting an ILO Agenda*, report I (B) prepared for the 103rd session of the International Labour Conference, 2014 (ILC.103/DG/IB) (Geneva, 2014).

5. Ensure healthy lives and promote well-being for all at all ages

54. Migrants are often not able to enjoy their right to health fully owing to such factors as discrimination, language, cultural barriers or legal status. Migrants in an irregular situation, temporary migrant workers, migrant domestic workers and migrants in detention are among the most marginalized groups.

55. Many migrants travelling to their countries of destination face desperate conditions, hidden or travelling in cramped boats or trucks, and may also face sexual and physical violence during the journey. Upon arrival in transit or destination countries, migrants receive little or no health care. In addition, they are often seen as the cause of diseases and undergo compulsory testing for some medical conditions such as HIV, a situation that violates their right to informed consent, is discriminatory and is counterproductive to improved public health because it encourages concealment.[16]

56. It is widely accepted that a healthy life is key to sustainable development. In the outcome document of the United Nations Conference on Sustainable Development, it is stated that health is a precondition for and an outcome and indicator of all three dimensions of sustainable development. The participants called for the full realization of the right to the enjoyment of the highest attainable standard of physical and mental health and for all workers to be provided with the necessary social and health protections. Research shows that migrants are able to improve the health standards of their families and that those involved in temporary migration are able to share health-improving practices with their families and local communities.[17]

57. In its resolution 67/81, the General Assembly urged Governments, civil society organizations and international organizations to promote the inclusion of universal health coverage as an important element on the international development agenda and in the implementation of the internationally agreed development goals, including the Millennium Development Goals, as a means of promoting sustained, inclusive and equitable growth, social cohesion and well-being of the population and achieving other milestones for social development, such as education, work income and household financial security. This concept should be implemented to ensure that marginalized groups, including migrants, are able to benefit from universal health coverage.

58. The goal should fully capture the right to health, which is an inclusive right extending not only to timely and appropriate health care, but also to the underlying determinants of health, including access to healthy occupational and environmental conditions and to health-related education and information, including on sexual and reproductive health.[18] This right should be captured in all other interrelated goals, including those pertaining to access to safe and potable water and adequate sanitation and an adequate supply of safe nutrition.

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[16] See A/HRC/23/41 and paragraphs 25, 27 and 28 of the HIV and AIDS Recommendation, 2010 (No. 200), of the International Labour Organization.

[17] Dilip Ratha, "The impact of remittances on economic growth and poverty reduction", MPI Policy Brief, No. 8 (Washington, D.C., Migration Policy Institute, September 2013).

[18] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 11.

59. The goal needs to ensure that all migrants and members of their families, irrespective of their status, have equal access to adequate, affordable, accessible and quality health care, including mental health care.[19]

Targets and indicators

60. The goal should include a specific target on reducing barriers to universal access to health and ensuring a balanced distribution of the human and financial costs of care.[5] Indicators can focus on:

(a) Number of countries that have developed national health legislation, policies, plans and programmes to promote universal health coverage for all, including migrants, irrespective of their status and circumstances;

(b) Proportion of migrants with equal access to adequate, affordable, accessible and quality health care, including essential drugs, irrespective of their status and circumstances, on a sustainable basis;[20]

(c) Number of countries that have eliminated discriminatory practices and barriers, including detention or deportation on the basis of the health conditions of migrants.[5]

61. Under a target of ending AIDS, tuberculosis, malaria and neglected tropical diseases, health indicators should be designed to measure the effectiveness of prevention, treatment and support measures in favour of migrants.

6. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

62. According to article 13 of the International Covenant on Economic, Social and Cultural Rights, the right to education is a universal right. As recognized by Committee on Economic, Social and Cultural Rights in its general comment No. 13, education is the "primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities". The Committee on the Elimination of Racial Discrimination, in its general recommendation No. 30, has highlighted the need for States to ensure that all migrant children, irrespective of their status, have access to public educational institutions. The Committee on the Rights of the Child, in its general comment No. 9, endorsed the concept of inclusive education as "a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students".

63. A goal on education should be formulated to ensure equal access to education at all levels, for all, including marginalized groups, such as migrants, and with a focus on:

(a) Ensuring that the education provided is inclusive, reflecting a commitment to creating learning environments adapted to include every child without discrimination;

[19] See General Assembly resolution 68/4.

[20] See Human Rights Council resolution 23/20, para. 4 (e), and World Health Assembly resolution WHA61.17.

(b) Requiring schools to be responsive to the differing needs and strengths of all children, including migrant children;

(c) Establishing institutions, policies and practices that recognize and value diversity.

Targets and indicators

64. Targets should include:

(a) All children, including migrant children, irrespective of their status and circumstances, have equal access to and complete free, inclusive and quality primary and secondary education;

(b) All children, including migrant children, irrespective of their status and circumstances, achieve recognized and measurable learning outcomes, especially in literacy, numeracy and essential life and work skills;

(c) All children, including migrant children, irrespective of their status and circumstances, receive culturally appropriate education;

(d) Education policies take into consideration the special requirements of marginalized groups, including migrant children, such as language training;

(e) Promotion of lifelong vocational training for all, including migrants;

(f) Education policies facilitate the social and economic integration of migrants through, among other things, the cross-border recognition of skills and qualifications.[5]

65. Indicators should include the proportion of:

(a) Migrant children gaining access to and completing universal, free and compulsory primary education leading to relevant and measurable learning outcomes;

(b) Migrant children gaining access to and completing progressively free secondary education, with graduates demonstrating relevant learning outcomes;

(c) Migrant learners who enrol in and complete tertiary education leading to a certificate, diploma and/or degree and have access to lifelong learning opportunities.[21]

7. Achieve gender equality and empower all women and girls

66. Migration can contribute to gender equality and the empowerment of women by providing women migrants with the income, status, autonomy, freedom and self-esteem that come with employment. Studies have shown that temporary migration is associated with higher school enrolment for girls in countries of origin.[17]

67. This goal should have a focus on ending gender discrimination and inequalities, in particular in marginalized groups, including migrants.

[21] See General Assembly resolutions 68/179, para. 5 (h), and 68/4, para. 13, in addition to Human Rights Council resolution 20/3, para. 3.

Targets and indicators

68. Targets should focus on:

(a) Eliminating gender disparities in primary and secondary education for all, including migrants;

(b) Ensuring equal employment opportunities for women and equal pay for equal work for all, including migrants;

(c) Ending all violence, including in the workplace, against women and girls, including migrants, irrespective of their status and circumstances;

(d) Eliminating all forms of discrimination against women and girls, including migrants, irrespective of their status and circumstances;

(e) Promoting the availability of gender-disaggregated data to improve gender equality policies, including gender-sensitive budgeting, in particular with regard to marginalized groups, including migrants.

69. Indicators should include the proportion of:

(a) Migrant women employed in the informal economy, including those in precarious employment such as short, part-time, seasonal and casual workers;

(b) Migrant women who have experienced psychological, physical and/or sexual violence, during the past year or their lifetime, by severity of violence, relationship to perpetrator, migration status and frequency;

(c) Migrant girls having access to and completing primary and secondary education and demonstrating relevant learning outcomes, by migration status.[22]

8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

70. Migrants also play an important role in the global economy. They fill labour shortages, contribute their skills, experience and expertise, send remittances home and open up new markets in destination countries. People migrate in part because there is a demand for their labour in destination countries. In many countries, the competitiveness of several economic sectors, such as agriculture, construction, hospitality, care-giving, fishing and extraction, rests on using what may be termed "cheap labour". Given that there are few legal migration channels, however, in particular for low-skilled workers, many migrants find themselves in an irregular situation, working in precarious conditions and exploited by recruiters, employers, smugglers and traffickers (see A/HRC/26/35). The International Labour Organization estimates that forced labour generates $150 billion per year.[23] Many of the victims of forced labour are migrants who leave their country of origin owing to the unrecognized needs in the labour markets in destination countries, given that migrants are often willing to do the dirty, difficult and dangerous jobs that nationals will not, at the exploitative wages and labour conditions that unscrupulous employers will offer.

[22] See General Assembly resolutions 68/179, para. 5 (e), and 68/4, para. 11.

[23] International Labour Office, *Profits and Poverty: The Economics of Forced Labour* (Geneva, 2014).

71. Such a goal gives the post-2015 agenda an opportunity to acknowledge and highlight the human and labour rights of migrants, which will in turn enhance their contribution to the global economy. States must hold employers accountable for ensuring that migrants are not exploited and repeal policies that create precarious working conditions for migrants, such as sponsorship systems. National law should guarantee productive employment and decent work for all, including migrants, irrespective of status and circumstances, in countries of origin and destination.

Targets and indicators

72. Targets should include promoting the financial inclusion of migrants and provide incentives for migrants to trade with and invest in countries of origin and destination, in addition to promoting a strategy to enable, engage with and empower migrant diasporas and their entrepreneurship.[5]

73. In recognition of the push and pull factors of migration, a target should be developed to ensure the appropriate governance of migration, to promote the matching of skills and jobs and of labour supply and demand between countries, including by creating fair, safe and regular channels for migration, including for low-skilled labour. In addition, the targets should aim to counteract deskilling and include increasing the proportion of migrants who are working at the skill level that is most relevant to their education, training and work experience, so as to facilitate their integration into the local labour force and their reintegration into the labour market in the country of origin.[5]

74. With regard to remittances, the World Bank estimates that $436 billion will be sent as remittances in 2014.[24] Private money transfers play a role in increasing household incomes and ultimately improving health and educational outcomes in countries of origin.[25] Consequently, a target on reducing to less than 3 per cent the transaction costs of migrant remittances, as suggested by the Open Working Group on Sustainable Development Goals, would go a long way to improving the economic status of families. Reducing the cost of sending remittances should not, however, be used in lieu of a national policy for poverty reduction, taking into account that remittances are privately owned sums of money.

75. A target to promote the formalization of informal-sector activities and employment should have specific indicators on the formalization of the specific economic areas in which migrants work, for example the construction, fishing, hospitality, care-giving, extraction and agricultural sectors, and include the proportion of migrant workers in the informal sector who having to the formal sector during the reporting period.

76. A target on recruitment would assist States in lowering the overall human and financial costs of migration. It could focus on ensuring ethical, transparent and responsible engagement of intermediaries at both ends of the migration process by establishing effective governmental regulatory monitoring frameworks and using all international cooperation channels available.

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[24] See www.worldbank.org/en/news/press-release/2014/04/11/remittances-developing-countries-deportations-migrant-workers-wb.

[25] Organization for Economic Cooperation and Development, *Policy Coherence for Development: Migration and Developing Countries* (Paris, OECD Publishing, 2007).

77. A target on achieving full and productive employment and decent work for all should encompass the protection of the human and labour rights of migrants, including equal opportunity and treatment in employment, in compliance with international human rights and labour standards. Indicators should focus on:

(a) Number of countries that have ratified relevant international human rights and labour law instruments providing for the equality of treatment for all in respect of employment;

(b) Number of countries whose national legislation and policies provide for equality of treatment for all in respect of employment, including through the protection of the labour rights of migrants and their equal access to social security benefits, as well as to redress mechanisms;

(c) Reduction of upfront costs for migrants, especially recruitment fees;

(d) Increased regulation and monitoring of the recruitment industry;

(e) Mutual recognition of foreign educational qualifications and the portability of social security benefits, including through the conclusion of bilateral and multilateral agreements;

(f) Disaggregated data showing the proportion of migrants who have reported cases of violation of the right to work, including forced labour, discrimination and unlawful termination of employment and the proportion of victims who received compensation.

78. A target on ending the worst forms of child labour and protecting the rights of and ensuring safe and secure working environments for all workers, including migrants, should include as indicators:

(a) Number of countries that have ratified relevant international standards and whose national legislation provides for the protection of the rights of migrants and their equality of treatment in employment;

(b) Number of information campaigns that promote decent work and the protection of the human rights of migrants;

(c) Incidence of forced labour, human trafficking and the worst forms of child labour, including in domestic work;

(d) Number of prosecutions of human trafficking and forced labour;

(e) Number of cases in which migrants are offered special visa protections or other protective measures for victims of trafficking and forced labour;

(f) Number of businesses screening their global supply chains for forced labour and the worst forms of child labour;

(g) Proportion of low-skilled workers, especially women and child migrants, who are filing complaints of labour exploitation, and are obtaining compensation.[26]

[26] See the zero draft prepared by the Open Working Group of the General Assembly on Sustainable Development Goals.

9. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

79. States have assumed obligations to ensure equal access to justice for all within their borders by committing themselves to respecting, protecting and fulfilling several rights, including to an effective remedy, to equality before the courts and tribunals, to a fair trial, to legal assistance, to equality and equal protection of the law, access to justice without discrimination, to recognition as a person before the law and to seek and receive information.

80. That migration policies are rarely based on human rights and that labour laws either do not apply to migrant work or are not implemented in favour of migrants leave many migrants in a precarious situation, thereby preventing migrants and States from fully maximizing the benefits of migration. Migrants face discrimination and exploitation in the workplace and sometimes experience forced labour. They often find themselves in debt bondage as a result of exorbitant recruitment fees.

81. Yet, irrespective of their legal status and circumstances, migrants most often do not seek redress for the human rights and labour standards violations that they suffer, given that they live in fear of detection, detention and deportation. This holds especially true for the most marginalized migrants, including those in an irregular situation and live-in migrant domestic workers, the overwhelming majority of whom are women.

82. Migrants, with or without regular status, are routinely excluded from access to justice on an equal footing with citizens of the country of destination. Migrants who are unable to claim their rights and report abuses or violations are trapped in a vicious circle of impunity, exploitation and marginalization. Effective and accessible justice systems can be tools to overcome exclusion, for example through the development of progressive jurisprudence on economic and social rights, by enforcing the human and labour rights of migrants and by remedying their exploitation by private or public actors.

83. The Special Rapporteur believes that this goal should focus on making the rule of law effective: specifically ensuring that marginalized groups, including migrants, have effective access to justice. Societies respecting the rule of law, effective access to justice and non-discriminatory treatment by government institutions are fertile ground for thriving and sustained development.

84. The Special Rapporteur proposes that the goal should include strengthening the rule of law at all levels. States should adopt and implement legal, policy and institutional guarantees for equal and effective access to justice for all, thereby ensuring that marginalized groups, including migrants, are able to fully enjoy their rights.

Targets and indicators

85. Relevant targets should focus on:

(a) Providing legal identity documents to all, including migrants, who have no such legal identification, given the profound relationship between lack of civil legal identification and marginalization;

(b) Ending discrimination and inequalities for all, including migrants, in the laws, policies and practices that govern access to justice;

(c) Providing equal access for all, including migrants, to independent, competent and responsive judicial and quasi-judicial institutions, including courts, tribunals, administrative tribunals, labour tribunals, immigration tribunals, national human rights institutions and ombudspersons;

(d) Ensuring equal access for all, including migrants, to legal assistance;

(e) Providing equal access to competent and affordable legal representation;

(f) Ensuring the physical accessibility of the justice system, for example for persons with disabilities or in rural areas;

(g) Providing equal and affordable access to reliable legal information.

86. Indicators should include:

(a) Number of individuals who lack a basic legal identity document;

(b) Number of complaints filed by migrants of human and labour rights violations, discrimination or abuse with any judicial or quasi-judicial institution;

(c) Proportion of cases in which migrants were effectively provided with proper legal representation and legal aid for their defence;

(d) Number of court fee waivers for all those who cannot afford them, including migrants;

(e) Reduction of the number of migrants in immigration detention;

(f) Proportion of migrant detention cases in which migrants were released into non-custodial alternatives to detention;

(g) Abolition of laws, policies and programmes that criminalize irregular migration.

87. A target should be developed that focuses on the reduction of crime and violence against migrants during their migration journey and ensuring the effective protection and assistance to victims of such exploitation and abuse. Indicators should focus on:

(a) Number of prosecutions of human trafficking, smuggling and forced labour;

(b) Number of cases in which migrants are offered special visa protection or other protective measures for victims of trafficking and forced labour.

88. To tackle continuing discriminatory and xenophobic acts, there should be a target on the elimination of acts of violence and manifestations and expressions of racism, racial discrimination, xenophobia and related intolerance against migrants.

89. Indicators should include:

(a) Time frame and coverage of mechanisms providing information and education on a culture of non-violence, diversity and multiculturalism, which focuses on creating public awareness of the cultural, social and economic contributions of migrants;

(b) Time frame and coverage of mechanisms supporting the reintegration of migrants and their families into their countries of origin;

(c) Time frame and coverage of policy on eliminating discriminatory laws, policies and practices, with particular attention paid to marginalized groups, including migrants, and on empowering such groups in the social, political and economic fields;

(d) Time frame and coverage of laws that protect all migrants and their families against all forms of discrimination, labour exploitation, abuse, xenophobia, violence and related intolerance, with a focus on marginalized groups, including children and women;

(e) Proportion of migrants who are victims of crime, including bias-driven violence;[27]

(f) Proportion of the migrant population feeling unsafe, for example walking alone after dark or being alone at home at night.

10. Make cities and human settlements inclusive, safe, resilient and sustainable

90. Migrants in an irregular or precarious situation are often obliged to live in areas with poor access to basic services and facilities, notably in urban areas. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, has highlighted that the housing situation of migrants in an irregular situation is of grave concern, noting that, because of restrictions in their access to housing in the private market or to public housing, such migrants are often homeless or living in crowded, unsafe and unsanitary conditions. She reiterated States' obligation to ensure non-discrimination and equal treatment to migrants, irrespective of their status and circumstances, in the enjoyment of economic, social and cultural rights, which includes the right to adequate housing. Moreover, she noted that the high degree of precariousness experienced by migrants as a mere consequence of their status required the adoption of special measures to counter the cumulative negative effect of systemic marginalization and discrimination (see A/65/261).

Targets and indicators

91. A target addressing the specific needs of marginalized groups, including migrants, who live in urban slums and suburban areas would be essential. Such a target on improving the lives of slum dwellers should be firmly rooted in human rights and ensure security of tenure, without which the possibility of forced evictions remains. Indicators should include the development of programmes to promote the social, cultural and economic integration of migrants in their countries of destination.

11. Strengthen the means of implementation and revitalize the global partnership for sustainable development

92. States today are often simultaneously countries of origin, transit and destination. They are all facing similar benefits and challenges from migration and

[27] See General Assembly resolution 68/179, paras. 4 (a) and 5 (f), the Durban Declaration and Programme of Action, paras. 16 and 48, and Human Rights Council resolution 23/20, para. 4 (b).

need to work together to protect and promote the human rights of migrants, which in turn would bolster development. All stakeholders should be engaged in the implementation of the sustainable development goals, including through effective, innovative and accountable partnerships in cooperation with Governments, that mobilize financial resources, develop and disseminate technologies and provide technical expertise. Private businesses such as recruitment agencies and employers, diaspora communities, international organizations, civil society organizations, trade unions, employer organizations, all government sectors and other relevant stakeholders must work together to fully harness the impact of migration on development and ensure the protection of the human rights of migrants. National efforts need to be reinforced by international support, which may come in the form of technical, financial and political cooperation.

93. The business sectors that employ migrant workers either directly or within their supply chains have a significant role to play in practising due diligence in all their business activities to ensure that the labour and human rights of migrants are adequately promoted, respected and protected. States have an obligation to monitor the activities of the private sector, promote good practices and apply appropriate sanctions where necessary.

94. States must recognize and address what may be termed the "pull factors" of migration, such as unrecognized demand for low-skilled labour in economic sectors, including construction, agriculture, hospitality or care-giving, which cannot be met locally and provide for fair, safe and regular migration channels for such low-skilled jobs. Where regular migration channels fail to reflect labour market needs realistically, migrants are more likely to engage in irregular migration, thus risking exploitation, abuse and detention.

Targets and indicators

95. A target on improved and human-rights-based migration policies to ensure fair, safe and regular migration should be developed to stop exploitation, abuse and violence with regard to migrants, irrespective of their status or circumstances. Sufficient channels for regular migration should be developed to respond to the labour demand at all skill levels in the country of destination. Such policy measures could reduce the use by migrants of irregular migration channels and prevent them from falling victim to smuggling and trafficking rings. The policies should be culturally responsive and promote the participation of all migrants and their representatives, such as trade unions and civil society organizations, in decision-making processes that concern them.

96. Indicators for such a target should include:

(a) Time frame and coverage of policy on enhancing international cooperation to facilitate fair, safe and regular migration, in line with human rights standards, including through labour mobility at all skill levels;

(b) Time frame and coverage of enhanced regular migration channels, including for family reunification;

(c) Time frame and coverage of policy on avoiding criminalization and externalization approaches that aggravate the precarious conditions of migrants;

(d) Number of migrants who are killed, injured or victims of crime while seeking to cross maritime, land and air borders;

(e) Proportion of migrants with effective access to national protection mechanisms, including for seeking asylum or redress for human rights or labour standards violations;

(f) Time frame and coverage of policy on abolishing any form of detention of children on the basis of their immigration status or that of their parents;

(g) Number of social security agreements ensuring the portability of social security benefits for all migrants;

(h) Proportion of bilateral and multilateral agreements on migration that provide for human rights safeguards and comply with international human rights and labour standards, including effective complaint and redress mechanisms;

(i) Capacity-building for the collection, dissemination and use of disaggregated data on the situation of migrants;[28]

(j) Inclusion of migration in national and subnational development and poverty reduction strategies and plans, in addition to national adaptation programmes of action and disaster risk reduction strategies;

(k) Adoption and implementation of regional free movement agreements and/or labour mobility schemes;

(l) Reduction of the human cost of migration, including loss of lives and violations of human rights;

(m) Reduction of upfront costs for migrants, especially recruitment fees;

(n) Increased regulation and monitoring of the recruitment industry;

(o) Mutual recognition of foreign educational qualifications and the portability of social security benefits, including through the conclusion of bilateral and multilateral agreements.

12. Importance of disaggregated data

97. Today's migration data focus on stocks and flows, which cannot give a clear understanding of the human rights situation of migrants and their families and communities in countries of origin, transit and destination. When qualitative and quantitative data on migrants are made available, they are often incomplete, in particular with regard to the most marginalized migrants, including those in an irregular situation, who are frequently not registered anywhere.

98. Moreover, migration policy is too often designed in reaction to anti-migrant speech rooted in the current myths that migrants are taking jobs away from locals, draining public resources and constituting health or security risks.

99. To ensure reliable data collection on migrants in an irregular situation, thus improving policymaking and policy implementation, it is important to establish firewalls between public service providers, including teachers, doctors, social workers, labour inspectors and the local police, and immigration enforcement, to

[28] See General Assembly resolution 66/288, annex, para. 157.

ensure that the former are not made into auxiliaries of the latter and are able to perform their duties and missions without interference, including in the collection of data concerning migrants in an irregular situation. Without such firewalls, many migrants in an irregular or precarious situation will systematically avoid being identified by such public services.

100. For meaningful national plans, policies and programmes to be developed and implemented, States must focus on collecting and assessing data on the human rights situation of migrants. States can collect data from sources such as censuses, population surveys, labour force and household surveys, administrative records, public services, the justice system, national human rights institutions, trade unions and civil society organizations. The participation of hard-to-count migrant populations, such as short-term, circular, irregular and child migrants, trafficked persons, refugees and asylum seekers, in the design of surveys and other data collection instruments and in the dissemination and analysis of data will improve the relevance and quality of data. Migration governance institutions should also be able to ensure that the data, including the identities of those who participated in the production thereof, are protected and kept confidential.

101. Data collection should focus on the human rights aspects of migration and be disaggregated, preferably, by all prohibited grounds of discrimination, including by income, urban/rural area, sex, age, disability, nationality, sector of employment and legal status. By itself, however, disaggregation does not automatically result in the reduction of inequalities. It is the action of policymakers in response to the information revealed by disaggregation that can result in the required change, which must then be reflected when setting targets and indicators.

102. To ensure that no one is left behind, the post-2015 agenda needs to pay specific attention — across goals — to the outcomes of marginalized groups, including migrants. It should therefore ensure systematic disaggregation of indicators by nationality and migrant status under relevant goal areas, in order to measure the progress of marginalized migrant groups, including by identifying structural discrimination. As demonstrated earlier, this should also include developing specific migrant-sensitive targets under relevant goal areas.

103. In response to the need for better qualitative and quantitative data on human rights, OHCHR has developed a methodology for developing human rights indicators, collecting and disaggregating data at the global and national levels, which could ensure that migrants are neither excluded from disaggregation, owing, among other things, to their status as non-nationals, nor "left until last". OHCHR recommends the development of structural, process and outcome indicators. This configuration of indicators should help to assess the steps being taken by States to address their obligations — from commitment to and acceptance of international human rights standards and adoption of laws and regulations (structural indicators), to how they have been implemented through policies, programmes and budget allocations (process indicators) and to their results from the perspective of migrants and members of their families (outcome indicators).[29] OHCHR is working with the Global Knowledge Partnership on Migration and Development, the United Nations Children's Fund and the International Labour Organization to develop human rights

[29] OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (HR/PUB/12/5).

indicators relevant to migrants, which should be used to inform the post-2015 agenda.

13. Assessment of progress

104. The Millennium Development Goals placed emphasis on overall progress as an indicator of whether the Goals had been successfully achieved, which resulted in massive inequalities because the data did not pick up the fact that sections of society were progressing slowly or not at all. This state of affairs led to increased exclusion of marginalized groups, including migrants. Such groups often lack political capital and tend to be overlooked by Governments when it comes to developing targeted policies and programmes. The sustainable development goals must therefore be able to provide comprehensive information with regard to the distribution of progress among sections of society and provide incentives for those who are "left behind".

105. It is difficult to develop targeted programmes and measure progress for marginalized groups, including migrants, that are socially, economically and politically excluded or that suffer chronic violations that go unrecognized by the State. The relevant data tend not to be systematically collected, which leads to further exclusion. Without such data, marginalized groups are not adequately considered when States are setting priorities, developing policy and allocating budgets. Data sourcing that allows for disaggregated data and that measures and monitors the progress of development for all migrants, irrespective of their status, should be developed.[30]

106. The post-2015 agenda reporting system should provide that registering progress require movement in the reduction of gaps, or be conditional upon demonstration of progress of the lowest quintiles, and in all regions of a country.[31]

107. To assess progress in achieving the goal and its targets, the rate of progress as set according to the target for each population group and the reduction of inequalities should be clearly measured, including for migrants.

IV. Conclusion and recommendations

108. **The post-2015 agenda must address the freedom from fear and from want. Countries that have been seen as success stories of the Millennium Development Goals have also seen massive social unrest and political upheaval.[2] Economic growth alone is not an adequate measure of development. The post-2015 agenda must address economic, social and cultural rights, together with civil and political rights, to achieve peaceful societies, access to justice and political participation.**

109. **To guarantee inclusive sustainable development, the post-2015 agenda should focus on promoting and protecting the human rights of all marginalized groups, including migrants, irrespective of their status or circumstances, and**

[30] Global Migration Group position paper on integrating migration in the post-2015 United Nations development agenda (see footnote 14 above).

[31] See www.un.org/en/development/desa/policy/untaskteam_undf/pres_notes_ohchr.pdf.

on more comprehensive information about how progress is distributed.[32] Accordingly, it should:

(a) Recognize that migration interacts with development in the communities in which migrants live in many areas, including the economy, social development, health, education and cultural life;

(b) Build upon the success of the Millennium Development Goals and provide clear, concise, time-bound, measurable and human-rights-based goals, targets and indicators, especially for migrants, whatever their status and circumstances;

(c) Promote equality and non-discrimination as a stand-alone goal, with particular attention paid to the most marginalized groups, including migrants;

(d) Apply the principles of non-discrimination, participation, accountability and access to remedies to all goals, targets and indicators;

(e) Develop specific migrant-sensitive targets and indicators for each relevant goal;

(f) Ensure the systematic disaggregation of indicators by migrant status (e.g. by nationality and by migration and residence status), in addition to disaggregation by all prohibited grounds of discrimination, including age, gender, income, disability, rural/urban area, nationality and disability, in all relevant goals;

(g) Align all goals, targets and indicators with international human rights and labour standards, the aim being to include the realization of human rights for all in the post-2015 agenda, which would increase policy coherence and strengthen accountability;

(h) Explicitly focus targets and indicators on marginalized groups and aim to narrow the gap between the mainstream population and marginalized groups;

(i) Develop inclusive processes, so as to allow for national consultations that create better understanding of and adaptation to each goal, target and indicator, according to national contexts, especially taking into account and carrying the voice of marginalized groups, including migrants.[33]

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[32] Global Migration Group position paper on integrating migration in the post-2015 United Nations development agenda (see footnote 14 above).

[33] Jan Vandemoortele, "The MDGs: 'M' for misunderstood?", *WIDER Angle*, No. 1/2007, pp. 6-7.